

OVERSIGHT OF DEPARTMENT OF ENERGY
RESEARCH AND DEVELOPMENT FACILITIES

HEARING
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
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JULY 27, 1982

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OVERSIGHT OF DEPARTMENT OF ENERGY RESEARCH AND DEVELOPMENT FACILITIES

TUESDAY, JULY 27, 1982

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. William V. Roth, Jr. (chairman) presiding.

Member of the subcommittee present: Senator William V. Roth, Jr., Republican, Delaware.

Members of the professional staff present: S. Cass Weiland, chief counsel; Eleanore J. Hill, chief counsel to the minority; Katherine Bidden, chief clerk; Howard Shapiro, staff counsel; and Dave Glendinning, staff investigator.

A copy of the letter of authority follows:

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any Member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two Members for the administration of oaths and taking testimony in connection with hearings on the Oversight of the Department of Energy Research and Development Facilities, to be held on July 27, 1982.

WILLIAM V. ROTH, Jr.,
Chairman.

SAM NUNN,
Ranking Minority Member.

OPENING STATEMENT OF SENATOR ROTH

Chairman ROTH. The subcommittee will be in order.

Today, the Subcommittee on Investigations will focus its attention upon the research and development facilities of the Department of Energy, and specifically upon the management and administration of these facilities.

In doing so, the subcommittee adds to its growing list of hearings during the past 1½ years on fraud, waste and abuse and mismanagement in Federal programs. Previous hearings in this series have covered a wide range of programs and subjects—medicare home health

services, compensation for disabled Federal workers, off-exchange commodity trading and the fraudulent use of identification documents to penetrate Federal welfare programs.

With respect to our hearings today:

Department of Energy R&D facilities serve as the linchpins for our Nation's pure research efforts in the energy field as well as the continued development and production of nuclear-related weapons. They are indispensable to both our future energy needs and our future defense needs.

Accordingly, these facilities are the recipients of billions of Federal dollars. My concern for the most efficient use of these dollars led me last year to ask the General Accounting Office to expand an existing review of selected research and development facilities. More recently, subcommittee investigators have visited several sites in order to supplement GAO's work and prepare for this hearing.

Let me emphasize that today's hearing is not designed to assess the research value of specific projects or facilities. It is designed to assess the internal procedural controls within these facilities and the oversight provided by the Department of Energy. If these controls are found to be weak the solution lies in strengthening them. The solution does not lie in reducing R&D budgets.

The largest of these R&D facilities are the national labs, which are owned by the Federal Government but operated by contractors. These labs are often multidisciplinary in nature and most have operated since the inception of the Atomic Energy Commission. The basic operating philosophy of AEC and its successor agencies, ERDA and DOE, has been to award a prime contract for a lab and then allow the contractor considerable leeway in running the facility. While we do not intend to question this basic operating philosophy today we do intend to determine whether this leeway has become too broad and whether DOE should exercise greater direct oversight.

The fact that management problems exist in these facilities will not be news to some people. Scores of audit and inspection reports are released every year, produced by internal lab auditors, DOE program auditors and security personnel, the DOE Inspector General and GAO.

Our first witness this morning will be the Comptroller General, Charles Bowsher. Mr. Bowsher will present a summary of GAO's findings based upon the sample of labs and energy technology centers visited by his staff. The tech centers are smaller facilities which are both Government owned and operated. It should be kept in mind that GAO's sample of labs is not complete, as they did not visit all facilities. However, their findings pertaining to individual sites are certainly relevant and meaningful, and hundreds of millions of Federal dollars are involved. Our second witness will be Jim Richards, the DOE Inspector General. Mr. Richards will discuss the steps his office has taken to prevent waste, fraud, and abuse in DOE's R&D facilities as well as explain the impediments to this task. I would point out at this time that I remain, as chairman of this subcommittee as well as the full Committee on Governmental Affairs, committed to a strong system of inspectors general. Mr. Richards will be the sixth Inspector General to appear before the subcommittee in the past 12 months. The testimony of these witnesses has benefited the subcommittee not

only in terms of specific investigations but also in the general oversight of these offices. Finally, we will hear this morning from Jan Mares, Acting Under Secretary of DOE.

While Mr. Bowsher and his staff are coming forward, I would like to insert into the record of the hearing the prepared statement of the Argonne National Laboratory in response to the GAO report on this subject, although I have not had an opportunity to completely review this statement as we received it yesterday. I am pleased to note that the laboratory plans to make changes in their internal procedures in response to some of the GAO findings and their statement does provide some specific implementation dates.¹

Mr. Bowsher, under the rules of the Permanent Subcommittee on Investigations, it is necessary that all witnesses be sworn. So if you and anyone else who may testify would please rise and raise your right hand.

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BOWSHER. I do.

Mr. PITTRIZZI. I do.

Mr. CAMPBELL. I do.

TESTIMONY OF HON. CHARLES BOWSHER, COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAMES PITTRIZZI AND WILBUR D. CAMPBELL

Chairman ROTH. Thank you, please be seated. I welcome you to the hearing, again, before our subcommittee, Mr. Comptroller General, and I would ask you to proceed.

Mr. BOWSHER. Thank you, Mr. Chairman.

We are here today to discuss the results of our review of the internal controls over selected functions of the Department of Energy's research facilities. This review was performed at your request and covered five Government-owned, contractor-operated multipurpose research laboratories—Sandia, Hanford, Argonne, Brookhaven, and Oak Ridge—one single-purpose research laboratory—Fermi—and four Government-operated energy technology centers—Bartlesville, Laramie, Morgantown, and Pittsburgh. Over \$3 billion were budgeted for those facilities in fiscal year 1981.

Mr. Chairman, since we have furnished you a statement of fact which provides the detailed results of our audits at these facilities, I would like to take this opportunity to just highlight our major findings.

At both the contractor-operated laboratories and the energy technology centers, we found numerous weaknesses in internal controls. In some cases, the control weaknesses have resulted in waste and misuse of Federal funds and property, while in other cases, the potential for waste and misuse exists. We found that most of the control problems were in the procurement and property management functions. To a lesser extent, we found control weaknesses in certain payroll-related and foreign travel activities.

In the procurement area, we found a number of weaknesses in subcontracting for consultants and other professionals at the contrac-

¹ See p. 53 for the prepared summary statement of the Argonne National Laboratory. Argonne's complete response is retained in the subcommittee's files.

tor-operated laboratories. These involved: unwarranted sole source procurements, the improper use of subcontractors to hire employees, retroactive execution of contractual agreements, lax controls over payments for services, and questionable hiring of former employees as consultants.

Many of these problems are often aggravated, and sometimes caused, by DOE's practice of directing the laboratories to award contracts to firms selected by the Department.

At many of the laboratories visited, we found that controls over personal property need to be strengthened. Specifically, our review disclosed that inventory procedures are inadequate, many property items were not marked and controlled properly, and many excess and unneeded items appeared to be on hand. For example:

Instead of having an independent party conduct physical inventories, laboratories only require custodians who are responsible and accountable for the property to verify that they still have the property entrusted to them.

Many items which should be controlled as sensitive items are not, especially at Argonne and Brookhaven where lab management decided unilaterally and contrary to Department of Energy regulations to exclude all items over \$500 irrespective of their susceptibility to theft.

At several labs, items are not always marked as sensitive and are not properly secured. Moreover, frequently accountability for theft-prone items is lacking since the custodians often do not know where the items are.

Some laboratories apparently have more items on hand than are actually needed. We found many items that were not being used such as cameras, microscopes, and calculators.

The significance of good controls over property is perhaps best demonstrated by the results of an independent wall-to-wall physical inventory at Sandia Laboratory in fiscal year 1981. Over \$1.9 million in shortages and \$3 million in overages were found after comparing inventory counts to inventory records.

At the energy technology centers, we found that internal controls over property and small purchases were inadequate.

None of the centers we visited had a complete, up-to-date set of procurement procedures or guidelines. Two centers had inadequate purchasing approval authority, and two had ineffective controls to assure that requisitions were completed and processed before purchases were made. Regarding property controls, we found ineffective inventory procedures, inaccurate property listings, unreported missing property, and poor controls over property at off-site contractors.

Although the Government-owned, contractor-operated facilities and energy technology centers represent a significant portion—over 30 percent—of DOE's budget, they have received little audit coverage from the Inspector General [IG]. Because of limited staff, the Inspector General has chosen to provide only minimal audit coverage of these facilities since extensive coverage is provided by auditors assigned to DOE's field operations offices. However, because these auditors report to the managers of these field offices and not to DOE top management, their audit independence is not assured, audit results are not routinely brought to the attention of DOE top manage-

ment, and in some cases little or no corrective action is taken on audit findings and recommendations.

Until January 1982, there were only 12 IG auditors in the field and approximately 40 in the Washington, D.C. metropolitan area in comparison to 125 auditors assigned to the field operations offices. In January 1982, 46 operations office auditors were transferred to the IG.

In 1979, we recommended that the DOE IG should have control of all auditors who report to the managers of field operations offices. That report stated that "this arrangement does not insure maximum independence in selecting activities for review of operations offices' effectiveness." Further, the report showed that field auditors cannot be independent since the activities they audit are the responsibility of the operations office managers to whom they report.

In summary, I want to point out that both the Department of Energy and several contractors are very concerned about these problems. In fact, both the Department and several contractors have already taken, or have promised to take, action on many of these problems.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions that you or any other member of the subcommittee may have.

Chairman ROTH. Thank you, Mr. Bowsher.

As I understand, the General Accounting Office has prepared a statement of fact in lieu of a filed report.

Mr. BOWSHER. That is correct, Mr. Chairman.

Chairman ROTH. We will include the GAO final report, when completed as part of the record of these hearings.¹

Would you elaborate on what you mean by "poor controls over property in the hands of offshore contractors"? What sort of property are you talking about? What sort of problems and what is the impact of all this?

Mr. BOWSHER. The property could be anything from laboratory equipment to construction machinery. This is the kind of equipment that should be accounted for in inventory and disposed of at the contract closeout. The energy technology centers rely solely on the contractor to inform the agency of what property they have purchased with Government funds. At the two energy technology centers where we examined this issue, neither of them independently verify the accuracy of the contractor's reports. More than half of the contractors holding Government property, at one of the energy technology centers, failed to report any of the purchases and both centers failed to take prompt action to dispose of such property once the contract was completed.

Chairman ROTH. I am going to ask Mr. Weiland to continue with the questioning at this stage.

Mr. WEILAND. Mr. Bowsher, for you or one of the members of your staff, I think it is fair to say the PSI staff was somewhat taken back by a statement found in a DOE security report on the Brookhaven Laboratory in which laboratory personnel are reported to have said that they ordered double and triple the amount of supplies they need in order to assure having sufficient items available. Does this statement corroborate your own findings?

¹ See p. 82 for the General Accounting Office's final report.

Mr. BOWSHER. Well, it does. Unfortunately, the property control imposed at Brookhaven is not what it should be. An item, such as a camera, could be stolen and its absence could go undetected for a long time. Also excess items could be identified and be available to meet future requirements. I think to know the magnitude of any potential theft problem, you must first know what property you have and through periodic physical inventories, determine how much is missing.

Shortages then can be investigated to determine the cause. But if you don't have the records, it is very hard to track all this.

Mr. WEILAND. Did you find the inventory situation at Brookhaven to be particularly acute?

Mr. BOWSHER. We found property record problems at most of the places we visited. It was maybe a little more acute at Brookhaven, but it was not unique.

Mr. WEILAND. In the area of subcontracting by the labs, did you find examples where technical and scientific personnel agreed on contract terms and made contracting choices without regard to input from the procurement people themselves?

Mr. BOWSHER. Yes; we noted that in several instances, technical managers not only requisitioned but specified the source, the price to be paid, and the contract instrument to be used. Some requisitioners informed us they told the firms selected of the amount of funds available in the lab's budget to do the work. This demonstrates that you don't always have what you would normally hope for and that is the division between program people and the contracting people.

Mr. WEILAND. I take it you would not consider that a sound contracting procedure?

Mr. BOWSHER. We would not.

Chairman ROTH. Could I interrupt there? As I understand it, these laboratories are basically exempt from the normal procurement regulations of the Department of Energy; is that correct?

Mr. BOWSHER. That is correct.

Mr. CAMPBELL. They do have their own procurement regulations, but they are not bound by the same specific regulations that apply to DOE and other Federal agencies.

Chairman ROTH. Are you familiar with GOCO plants in the Department of Defense and how they are operated?

Mr. CAMPBELL. Not personally. Jim, have we done anything with these types of facilities?

Mr. PITTRIZZI. No.

Chairman ROTH. I would like to have some kind of comparison of the adequacy of controls in these areas because you also have a number of labs operated in the Department of Defense by contractor—how the controls and procedures compare. I would be interested if you think the Department of Defense does a better or less adequate job.

Mr. BOWSHER. I think, Mr. Chairman, we found some of these same problems in those kinds of reviews. But I think it would be interesting to study and see what are some of the differences in controls.

Chairman ROTH. Please proceed.

Mr. WEILAND. Getting back to this area of lab subcontracting, in our own staff work, we found several instances of tacking on supplemental agreements to these contracts. I would like to ask if your own people encountered that phenomenon, Mr. Bowsher, and how frequently you noticed that?

Mr. BOWSHER. Yes, we did encounter supplemental agreements. The ones that are executed after the fact really allow charges which exceed the time or dollar limitation of the original contracts. One example we found was a situation where a professional employee hired through a temporary help agency incurred over \$1,700 in travel expenses, even though the original contract allowed \$1,000.

Argonne then executed a supplemental agreement allowing payment of the additional expense. Our review of 34 supplemental agreements disclosed that 8, or about 24 percent, were executed after the existing agreement had expired. An additional 5 of the 34, or 15 percent, showed no date of execution.

Mr. WEILAND. Does the DOE itself have a procedure that is supposed to govern supplemental agreements?

Mr. PITTRIZZI. For the laboratories?

Mr. WEILAND. Yes.

Mr. PITTRIZZI. Basically, DOE approves laboratory procurement systems and the approval process should include review of procedures stipulating how supplemental agreements are handled.

Mr. CAMPBELL. Isn't there a periodic requirement for the review?

Mr. PITTRIZZI. Right.

Mr. CAMPBELL. Two levels of review, I think, take place.

Mr. WEILAND. Of the lab's own inhouse procurement systems.

Mr. PITTRIZZI. Right.

Mr. WEILAND. What procedures does DOE have to actually oversee the practices of the onsite contractors?

Mr. PITTRIZZI. DOE has a number of procedures or mechanisms they use to oversee GOCO contractors. We mentioned one in terms of the procurement review and approval process; another included a periodic assessment of the laboratory's implementation of that procurement system. Also the operations offices have periodic property reviews or reviews of property systems. In addition, internal auditors attached to the field operations offices frequently audit various aspects of the laboratory operations.

Chairman ROTH. To what extent are labs required to use competition in procurement?

Mr. PITTRIZZI. I would like to point out while they are not specifically bound by the Federal procurement regulations, their systems should insure full and free competition to assure the best prices are obtained and the best interest of the Government is served.

[At this point, Senator Percy entered the hearing room.]

Chairman ROTH. I am going to interrupt. I know Senator Percy has a busy morning and can only be with us a few minutes. This is an area in which he has special expertise because of his management background but also because of his particular interest in research and development. I think you have an opening statement, Senator Percy.

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. I have. It is mercifully short. I do apologize very much indeed for entering late and leaving early. I appreciate your usual courtesy, Mr. Chairman, and I do have a deep interest in this hearing. I will be most anxious to study carefully the results of the

findings and have always found your analyses and objective appraisal interesting and helpful and well worthy of following up.

This morning does mark another in a series of subcommittee hearings that is designed to point out ways that waste and mismanagement can be reduced in federally funded programs. I think since Senator Roth has become chairman, I believe it is impossible to determine how many millions of dollars have been saved as a result of the diligent followup that you have made in so many areas where taxpayer's money simply is not being expended as effectively and as wisely as it should.

In business, it was always a common practice that you just constantly go back over and say we can find a better way of doing things, and I might say Arthur Andersen in my own company, had been extraordinarily helpful in pointing out how well we thought we were doing and an objective, hardheaded look at it said you can find ways to do it better.

We would also return the investment one hundredfold sometimes in some of the studies that were made of improved management.

Today's hearing really provides an excellent example of how the Congress, the General Accounting Office, and the executive branch can work together to bring about necessary fiscal reforms.

Mr. Chairman, you first ordered your staff to conduct an exhaustive investigation of Government-owned and contractor-operated laboratories. That was followed by a formal request for a similar study by the General Accounting Office.

Second, GAO auditors, during the course of their work, sat down with laboratory managers to point out deficiencies in their fiscal operations. Third, this morning GAO is in the process of reporting preliminary findings which should serve as a model document for the Department of Energy and the laboratories.

I am pleased to announce this morning that as a result of your work, and that of the GAO, Argonne National Laboratory, located outside Chicago, is announcing a comprehensive plan of action to tighten its management practices. I have talked over management procedures and techniques with the officials out there any number of times. I have been a trustee at the University of Chicago for 30 years. I have had a deep interest in Argonne. I have been devoted to it but always devoted to it as one of the most efficient and effective laboratories in the country. It can always be made even better.

Some of the reforms will be implemented in September and some of them next January. Some have already gone into effect. They are quite meaningful and should result in significant savings. These are changes in the areas of procurement, equipment control, personnel, and payroll practices.

I would like to release a summary statement about this plan of action this morning and ask that a longer version of the same statement be made a part of the record at this morning's hearing, Mr. Chairman.¹

Chairman ROTH. So ordered.

Senator PERCY. As a strong supporter of energy research and development, I believe national laboratories, such as Argonne, Brookhaven, and Oak Ridge, play an important role in the future growth of this Nation. Argonne officials have seriously and conscientiously attempted

¹ See page 53 for the prepared statement of the Argonne National Laboratory.

to operate their laboratory in the public interest. They should be allowed to clear the public record in their written statement with regard to some factual misrepresentation.

The real problem seems to be the budget uncertainty that Argonne and the rest of the laboratories face. Even to this date, Argonne does not know its budget starting 66 days from now, for its next fiscal year. This is one of the reasons Argonne has told me they turned to the use of resident consultants. This budget issue must be resolved so the laboratories can plan in an orderly, businesslike fashion. That really is why this overall committee undertook years ago, in 1972, the whole analysis of the budget process to set up a new budget reform act in 1974 which would give us the time to change the fiscal year so that by October 1, every budget would be in place, and we have missed some of our own deadlines as we well know.

We are not nearly as bad off as we used to be. Everything is relative in life, I guess, but we still have a long way to go to be able to say, beginning of fiscal year, everyone knows where they are going. With 66 days left to go, how can it be possible to be able to plan a function, particularly as sophisticated a research operation, without knowing what the budget is? It is impossible. It creates a lot of personnel problems.

It is an unconscionable thing. The Congress and public support funding for these laboratories, in my judgment, has never been higher. In March, one of the largest audiences, 1,200 individuals, turned out for a hearing that I was privileged to chair at Argonne National Laboratory. Thursday I will be hosting a luncheon for the Illinois congressional delegation, that will feature both Argonne and Fermi Labs. We will hear how they could help create a new high technology industry in the State of Illinois where our unemployment rate now stands at an astounding 11.3 percent.

In closing, Mr. Chairman, I would like to offer my help and assistance in your efforts to reduce waste. You have been a leader in this ever since the day you stepped into the Senate of the United States and Congress, and certainly we have learned a great deal from you in that regard. I know that Dr. Massey, Director of Argonne supports what you are trying to accomplish. In a letter you received yesterday from him, he agreed wholeheartedly on the need for "constant vigilance on the expenditure of public funds."

Thank you very much, Mr. Chairman.

Chairman ROTH. I would just make one comment, Senator Percy. As you know, as a result of hearings of this subcommittee, and the full committee, I have introduced legislation that we hope will simplify the budgetary process. One of the recommendations being made is a 2-year budget process instead of 1 year. The principal purpose of that recommendation is to get some certainty into the picture, so that those depending upon the budget will know ahead of time what they will receive and can plan accordingly.

So I think that would be a helpful reform in the sense of these labs.

Senator PERCY. And always wanting to test out your ideas, I am happy to report for the first time in the history of our Foreign Relations Committee, we are in a 2-year process of reporting out a 2-year budget. We think we can look ahead 2 years. We think it will help a tremendous amount in planning and cut down the amount of detail we

get into and increase our oversight responsibility over the Department of State and we can get away from constantly every single year working on the budget. It's a great idea, I believe.

Chairman ROTH. Thank you, Senator Percy.

I would like to go back to our line of questioning. I understand the reason for exempting the laboratories from the general procurement requirements. There is a feeling laboratories are a kind of an institution that needs more flexibility in order to function effectively and to maximize an imbedded academic atmosphere in those installations.

What my concern is, is that unless you have pretty rigid controls and reviews, there is not much reason for anyone to worry about costs. In other words, a laboratory is reimbursed for whatever costs are incurred under the contract unless they are found to violate some basic law or regulation. I am not clear in my own mind to what extent these laboratories, the contracts, for example, are reviewed.

Let me ask you this question. To what extent does the Department of Energy require competition, which I happen to think is the best procurement method of maintaining low costs?

Mr. BOWSER. I think they require competition to the extent possible because what they require is a justification any time competition is not used. One of the problems we found in this review was that the justification some time was not there or else it was poorly done in that when we interviewed the people we couldn't find the logical support that should be there to justify the look of competition. So the competition is required by procedures and by regulations. What we found was that it was just not being carried out sometimes. The overall problem in our study was that procurement procedures, properly record procedures, and basic control procedures were not being followed, not being adhered to.

In other words, they weren't taking their physical inventories with independent people, they weren't reconciling the physical counts to their inventory record card, and things like that. As Senator Percy said, just basic good business procedures, administrative procedures in government requires that. These were some of the things I think were allowed to become lax at some laboratories. I think it can be corrected, and I am pleased they are moving in that direction.

Chairman ROTH. Let me try to become a little more specific in this area. Is there any requirement, for example, on the part of the Department of Energy that competition be used and, if so, are you familiar with what those specific requirements are?

Mr. PIRTRIZZI. The Department of Energy, in its review of the laboratory systems, is supposed to assure that competition is accomplished to the best extent possible.

Chairman ROTH. Let me ask this question: Do we know for a fact whether anyone is making sure that competition is used? Who reviews that? For example, if you have a one-half million dollar contract, can the laboratory let that contract, and would that be reviewed and approved by any Government official?

Mr. PIRTRIZZI. That is a threshold for review and approval of laboratory contracts by the Department of Energy. One of the monitoring mechanisms DOE uses is a review of certain type of contract above a specified amount on threshold. We found that it was \$500,000 for cost type contracts at several laboratories.

In addition, the periodic reviews of the sole source justifications of the procurement systems often are limited to a review to see whether the justifications for the lack of competition are, in fact, on file.

Chairman ROTH. Have any costs incurred by these labs been suspended by the Department of Energy or by the auditor?

Mr. PITTRIZZI. Not to my knowledge.

Mr. CAMPBELL. I don't think they were part of our sample. May I turn your question around a little bit, Mr. Chairman? Contractors are allowed to go sole source, for example, if there is a special, unique service they need that can't be obtained anywhere else. In one lab we did a test of about 77 procurements and found 90 percent were sole source procurements with no competition. As part of the sample of that 77, we looked at about 34 in greater detail and found in 71 percent of the cases that we had great question as to the justification for going sole source. There is a problem and it is not getting the scrutiny it probably needs.

One internal control, independent audit coverage, would be more effective if the IG had a greater capability. That is an area that could be looked at a little more effectively.

Chairman ROTH. I must confess I sort of get the impression that these installations are pretty free to follow their own practices based partly on what you are saying now. No one really audits those. The IG does not have. I gather—he doesn't have adequate auditors nor apparently does the Department of Energy itself; is that correct?

Mr. PITTRIZZI. That is correct. There is also not a lot of monitoring from DOE on the program side either.

Chairman ROTH. Isn't it pretty remarkable if you have billions of dollars being spent on an annual basis that there are no costs ever suspended? That is certainly not the case in the Department of Defense, as bad as that Department is.

Mr. PITTRIZZI. In terms of costs suspended, as part of the sample we took and the cases we looked at, we didn't develop any evidence. I am not sure we can say across the board no costs have ever been suspended.

Chairman ROTH. Let me ask you this question, Mr. Bowsher. I guess my basic concern is that in a cost reimbursement type contract, what kind of controls does the Government really have? If we don't review their contracts but just reimburse them—

Mr. BOWSHER. You have to have review because there is no question costs are being charged to that project and it should be more closely reviewed to see whether they are reasonable.

[At this point, Senator Percy withdrew from the hearing room.]

Chairman ROTH. Do we have so-called contracting officer representatives at these installations that approve contracts over any certain size or amounts?

Mr. BOWSHER. You definitely have the contracting officer function at these places and they do have thresholds.

Chairman ROTH. Does he specifically approve contracts?

Mr. BOWSHER. They do, but we found cases here where you didn't have what I would call the natural or the required separation of the program people dealing with what they are supposed to do and the contract people and procurement people doing what they are supposed to do. That was one of the breakdowns. In other words, the contract-

ing people should be negotiating these contracts with the vendor and the individual supplier of goods and services, and the program people should be just setting forth what their needs are, you might say.

What we found here sometimes was that people were in some cases even being directed from DOE to hire people or do certain things and it was being done on what we refer to as a directed procurement. That just shouldn't be.

Chairman ROTH. Isn't it true that GAO saw almost no competition, for example, in the personal services?

Mr. BOWSHER. As Will pointed out, we saw instances where there was a high percentage of sole sources for personal services. That just shouldn't be, and when we asked for justification, our people found many instances where if it was there, it was inadequate.

Chairman ROTH. What is the role of the contracting officer representative with respect to, say, these personal services contracts? Does he personally approve them?

Mr. BOWSHER. Yes; if the amount exceeds a designated threshold.

Chairman ROTH. By his signature?

Mr. PITTRIZZI. Are you speaking of the DOE contracting officer now?

Chairman ROTH. Yes.

Mr. PITTRIZZI. The laboratory contracting officer—

Chairman ROTH. I am not speaking about the contracting officer at the lab. I am talking about the so-called Department of Energy contracting officer representative. They have a contracting officer representative at the plant; is that correct?

Mr. PITTRIZZI. Yes.

Chairman ROTH. Does he review the contracts and approve certain contracts?

Mr. PITTRIZZI. Certain contracts, yes, sir, at a relatively high threshold. The contracts we looked at generally were not within that threshold.

Chairman ROTH. What was that threshold?

Mr. PITTRIZZI. I believe one threshold was \$500,000 for cost-type contracts. Another involved contracts with individuals where the pay exceeded \$200 a day or \$5,000.

Chairman ROTH. All consulting contracts have to be personally approved by the Government's contracting officer?

Mr. PITTRIZZI. That is my understanding; yes, sir, when the contracts are with individuals, not firms, and call for payment over \$200 per day or \$5,000.

Chairman ROTH. You speak of directed procurements. What do you mean by this term and could you explain some of the weaknesses caused by using these?

Mr. BOWSHER. Well, the type of directed procurement varied. In one extreme DOE directed a specific service. In other instances, DOE also directed the service provider and specified cost in addition to this specific service. The latter extreme case causes the most problems because Argonne in that case was required to noncompetitively award a contract to a preselected source at a predetermined price.

When you get that kind of a situation, you don't have the procurement function operating the way it should be.

Chairman ROTH. Could you explain some of the difficulties encountered by your staff in identifying directed procurements?

Mr. CAMPBELL. These directed procurements, which are directed by DOE headquarters in Washington, are not specifically identified in GOCOs' records. They were generally unable to identify all of them for us. We had to dig them out carefully from the files and interviewing people who identified them from memory about a particular transaction. It was very tough, so we can't say with any degree of certainty that we have identified all of the directed procurements, but there were a great number of them.

Chairman ROTH. Let me see if I am correct in my understanding. I understand what has happened is the Washington headquarters of the Department of Energy will direct certain procurements to be made by the GOCO, Government contractor. There is no assurance, really, that these directed procurements are even within the scope of the contract. Isn't this just a means of headquarters avoiding regulations or Government procurement procedures?

Mr. CAMPBELL. Yes, sir, in many cases it was done primarily because it was easier and quicker for the GOCO to make the procurement than it was for DOE to do it under Federal procurement regulations. Quite often we noticed the services performed appeared not to be related to the mission of the GOCO.

Chairman ROTH. What is the legal basis of reimbursing those contracts if they are not within the scope?

Mr. CAMPBELL. Jim, was there a legal problem?

Mr. PITTRIZZI. They are generally assigned under an ongoing project or funded under an ongoing project in many cases.

Chairman ROTH. Is the Government liable for a directed procurement without the scope of a contract, not in accordance with Federal requirements, laws and regulations? Is that legally enforceable? I admit you put the contractor in a bad spot because obviously he doesn't want to irritate those, I suppose, who are responsible for administering his contract?

Mr. PITTRIZZI. That is true.

Chairman ROTH. What is the purpose of having any laws and regulations if you can avoid the process by this means? Do you have any idea? Could you give any guesstimate as to how commonplace this approach is?

Mr. CAMPBELL. I think in one laboratory—Jim, correct me on my numbers—we found something like 92 directed procurements costing something like \$11 million. In another laboratory, we were able to identify something like 11 directed procurements costing something like \$1.1 million. That is some feel for the magnitude of the directed procurements.

It is fair to point out, I think, since August of 1981, the Assistant Secretary did issue a memorandum prohibiting directed procurements for headquarters support services and recently DOE has issued an order, I think, in January of this year on this topic.

Chairman ROTH. And when you were out at these laboratories, did this practice cease this year?

Mr. CAMPBELL. No, I think since the August memo, we have found that three other directed procurements took place. At the time our review ended, there were two more pending.

Chairman ROTH. The Federal employee who improperly directed procurement, can he be liable under law?

Mr. CAMPBELL. I am sorry?

Chairman ROTH. The Federal employee in headquarters who improperly directed such procurement, would he have any personal liability?

Mr. CAMPBELL. I am not sure it is an improper procurement, it is a matter of interpretation. I guess they felt, and still feel—Jim, do you want to address the distinctions?

Mr. PITTRIZZI. Currently the directed procurements can still be accomplished. The only distinction being that the lab now has to have technical responsibility for the program as opposed to having no involvement in the program at all and the work being done directed from DOE headquarters.

What we found is the lab in some of these instances does have technical responsibility and the headquarters has directed them—

Chairman ROTH. But if I understand your response earlier, there have been cases where someone in headquarters directed a laboratory to make a certain procurement to avoid the requirements of the law and regulations circumscribing Government procurements. So they are going outside of the normal channels to avoid those requirements because it is more expeditious. The question I have, is the Government liable for those procurements? Perhaps it is. I don't know what the answer to that is.

Second, what is the responsibility of the employee who knows that he is avoiding procurement? Does he have any personal liability?

Mr. PITTRIZZI. In some of those instances, we did note that prior to the direct procurement taking place, the individual who also got the contract was directed to begin work before the contract existed. In that case, perhaps there is a question as to the employee's liability.

Where a contract is awarded before the individual begins work it appears to be in a somewhat different situation, and I'm not sure whether there would be personal liability.

Mr. CAMPBELL. Mr. Chairman, although I am not a lawyer, I would think because the Government did receive the benefit of the service, either directly or indirectly through the GOCO, it would be liable.

Chairman ROTH. You may under common law.

Mr. BOWSHER. I think once the Government certifies the work was done, and that is another area we found some problems, then I think, generally speaking, the Government would be liable. We can look into that further, Mr. Chairman.

Chairman ROTH. Let me just ask one further question because we all know in these hearings, very often there are promises to do better and paperwork is issued to support that. The real test is whether these practices are stopped. As I understand, the Department of Energy did direct such procurements to stop early this year, but what has been the followthrough, what has been the implementation of this policy?

Has anyone who improperly followed such procurement been called on the carpet? Are you aware of any? A basic question, is there any real effort to put a stop to these kinds of practices that are outside procurement laws and regulations.

Mr. PITTRIZZI. As we mentioned, there was a memo issued and an order issued—

Chairman ROTH. What have they done to followthrough? That is an important step, I agree with you. What have they done to make sure those memorandums are being adhered to? You say there are still examples of directed procurements since then? Have we any examples that the management in Washington at the DOE took action to correct this?

Mr. PITTRIZZI. My understanding is it can be a very difficult problem to correct. We were told by DOE individuals that directed procurements could still occur; there just perhaps wouldn't be any documentation by which to identify them.

With regard to what specific action other than the memos and the DOE order—

Chairman ROTH. Mr. Bowsher, one of the things I would urge you to do at an appropriate time after these hearings is to review what steps have been taken to correct this.

As I said many times in this subcommittee, the proof of the pudding is to see whether corrective action really is taken or whether lipservice is only given to correction.

Mr. BOWSHER. I think some of the Department of Energy witnesses will talk about that, but we will followup, Mr. Chairman.

Chairman ROTH. I would appreciate that.

I will ask Mr. Weiland to continue.

Mr. WEILAND. In the area of consultants and the use of these intermediary firms, Mr. Bowsher, in your statements of facts, the term "resident consultant" is used to describe individuals engaged by Argonne and other labs through various intermediary firms.

Can you give us more details on who these people are and what their work assignments are once they arrive on board?

Mr. BOWSHER. These individuals are not consultants in really the true sense. They are engineers, economists, geologists, information specialists, sometimes computer programmers, other professionals, and they really work at Argonne in research and other projects under the Argonne supervision. So they really are being used in the same manner as other Argonne employees.

Mr. WEILAND. Could you give us some examples of how these people come to be hired? We understand from our own staff work that several of these people have actually gone to the labs for employment and have been referred to intermediary firms and then hired back through that firm as a consultant with a large overhead attached.

Is that, in fact, the results of your findings?

Mr. BOWSHER. Yes; we ran into several examples like that. For example, the first one here, Argonne paid a firm \$62,900 for the services of a professional during the 12 months prior to becoming an Argonne employee. He was subsequently hired directly by Argonne at an annual salary of \$31,740. This person was hired through an intermediary firm and worked at Argonne for approximately a year before he was directly hired by Argonne at substantial savings.

Another example, Argonne, again, because of a hiring freeze, a technical division referred a chemist to an intermediary firm after he applied for direct employment with the laboratory.

From August 1978 to January 1980, that chemist was engaged by the firm to work at Argonne and that firm charged Argonne a 53 percent markup in salary.

We have another example where they recruited six resident consultants from an intermediary firm and paid an overhead rate of 70 percent.

Mr. WEILAND. Do you have other examples having to do with Argonne's office here in Washington? I understand some temporary help agencies have been used here in town.

Mr. BOWSHER. At Argonne, we found contracts totaling up \$1,380,000 with seven temporary help agencies for clerical services here in the Washington, D.C. area. These individuals worked on projects assigned to Argonne by DOE, including such chores as typing DOE correspondence.

According to an Argonne official assigned to this Washington, DC., office, some of the temporary help contracts were established in 1979 at DOE's request to provide support services for the emergency building temperature program. So this is a procedure they have used.

Mr. WEILAND. Have you met with the people at Argonne or have members of your staff done so to get their explanation for just why these intermediary firms are being used in this manner?

Mr. BOWSHER. Yes, our staff did. What they really said was that because of uncertainties that they were facing both in the program and the funding cycles, rather than hiring large numbers of people and then have to lay them off later, they thought it was best to enlist the needed talent through these firms and acquire talents they needed at that time that way.

They recognized it was more costly, but that was their explanation.

Mr. WEILAND. What about your own office's response to that kind of explanation?

Mr. BOWSHER. Well, we worry a great deal about it because, again, you are paying very top dollar, more than you would if you hired the people. We just wonder sometimes if it was all necessary and we worry about, again, the control, the control over Federal dollars being spent that way.

We just think it is against circumventing what is normally good personnel control procedures and Federal regulations.

Mr. CAMPBELL. When we looked at the specific cases that we tested we saw that the reasons provided by lab employees who were involved were somewhat different from the overall management philosophy. We saw some of these—this approach was used in order to avoid an employment ceiling, maybe, or to hire a particular individual who lacked necessary qualifications to become employed.

There are a lot of more mundane reasons than the basic funding uncertainties.

Mr. WEILAND. That is all I have, Mr. Chairman, on this question of intermediary firms.

Chairman ROTH. What concerns me is, again, the lack of controls. For example, I understand there was an instance where a lab hired a nuclear engineer through the Kelly Girls; is that correct?

Mr. BOWSHER. That is correct. I think that really highlights the problem using this technique that they were doing. They hired this person for a 12-month contract through Kelly Services which obviously do not normally handle this kind of professional, and also we found at one point Argonne hired a person from the Washington School for Secretaries. They wanted the person to do research and

international energy-related contracts. That contract went for a 6-month period and cost \$14,000 and had a 50-percent overhead rate.

Chairman ROTH. Again, it seems to me this is a technique of avoiding some of the Government rules and regulations. I think anyone who has followed this subcommittee, there has been grave concern with the use of consultants as a means of avoiding employment ceilings and other requirements of the law.

I fear this is the practice here now. I will agree that our budgetary processes, our failure to meet deadlines, sometimes have put them in difficult positions, but I don't think there is any excuse for that kind of widespread practice.

One final area: Do you have an idea of the amount of foreign travel being taken by the employees of the various labs?

Mr. BOWSHER. Yes, we do.

Chairman ROTH. How are these controlled? Who approves foreign travel?

Mr. BOWSHER. First, let me give you the amount of foreign travel. In the fiscal year 1979, Argonne had 339 trips. They had about the same, 340, in fiscal year 1980 and then dropped down to 299.

The amount of moneys involved, was about \$350,000 in fiscal year 1979, \$450,000 in 1980, and \$475,000 in 1981. Brookhaven had 163 trips in 1979, 194 in 1980, and 164 in 1981 and costs totaled about \$191,000 in fiscal year 1979, \$266,000 in fiscal year 1980, and \$266,000 in fiscal year 1981. It is fairly substantial. One of the problems which worried us a great deal when we did some checking in that area was how much personal leave some of these people took in addition to the official time they were overseas.

Again, something this subcommittee and others in Congress have been very concerned about among Federal employees. We just believe there should be more control over that.

Chairman ROTH. Is this travel approved at a fairly high level? Is it subject to approval by a Government contracting officer?

Mr. PIRTRIZZI. Sir, it varies. The foreign travel procedures in the Department of Energy are somewhat decentralized. The program offices in their respective technical areas have different procedures. Some have delegated that responsibility to the laboratory. Others have retained it. Some have delegated it to the operations offices. We found different procedures and differing levels of approval.

Chairman ROTH. Time is passing on.

Let me just ask a couple of final questions.

Are there any internal controls or other recommendations you have that ought to be instituted to be sure the Federal dollar is being well spent?

Mr. BOWSHER. I think basically getting these controls in place. I think the procedures are there and I think what they need are more vigorous management attention at the laboratories. I think also—

Chairman ROTH. Could I interrupt there, only the contractor, not the contracting officer?

Mr. BOWSHER. The overall review by DOE, I definitely think that is called for. I think the Inspector General's Office, if he had more of the resources reporting directly to him, he could do a better job of keeping his eye on this.

These kinds of situations also point out the importance, I think, of the Financial Integrity Act which is another piece of legislation that your subcommittee has sponsored and that is the need for good internal controls, a need for annual review of good internal controls at all Government installations, and I think these kinds of reviews always point out that need.

Chairman ROTH. Thank you, gentlemen, for being here today. I guess my principal concern is that if you don't have established procedures on the part of the Government that are carefully reviewed and adhered to, the Government is in a very difficult position because under these contracts, the Government has agreed to reimburse the contractor for all expenses incurred under the contract.

If you don't have any requirements of competition, if you don't have any review of contract practices, then it is pretty much an open check. I am not suggesting that those contractors are not responsible, but where you have a fixed price contract, it is incumbent upon the contractor to be as efficient and effective as possible in order to maximize their profit but here you have no such incentives.

So I would urge GAO to continue to audit this area of activity.

Thank you, very much, gentlemen.

Mr. BOWSHER. Thank you, Mr. Chairman.

Chairman ROTH. I believe the staff now would like to submit a statement.

Mr. WEILAND. Yes, Mr. Chairman. I won't take the time to read it. I would like to insert it into the record and say for the record members of the subcommittee staff have been involved in this project for some time.¹

Essentially, our own work has tended to confirm and corroborate things we heard from GAO this morning. I also would like to insert into the record, if I may, a copy of a memorandum dated August 18, 1981, from the Assistant Secretary for Management and Administration at DOE which was referred to during the GAO's testimony.

Chairman ROTH. Those documents are ordered to be included as part of the record.

[The document referred to was marked "Exhibit No. 1," for reference, and follows:]

¹ See p. 58 for the prepared staff statement of the subcommittee.

EXHIBIT NO. 1

U.S. DEPARTMENT OF ENERGY

memorandum

DATE AUG 18 1981

REPLY TO
ATTN OF AD-242

SUBJECT Directed Subcontracts for Support Services

TO Secretarial Officers
DOE Staff Officers
Managers, DOE Operations Offices

As a result of a recent survey of support service contract activity in the field, we have become aware of a contracting approach which is inappropriate. There have been a number of instances in which Headquarters organizations have directed operating and on-site service contractors (operating contractors) to establish subcontracts to provide support services directly to a Headquarters organization. Most of these instances have involved sole source actions. Such arrangements are entered to meet Headquarters support service requirements and are in fact managed by the sponsoring Headquarters organization. This arrangement puts the operating contractors into the role of a mere procurement office and avoids the safeguards provided by the normal DOE procurement process on procurement actions which should be subject to those safeguards.

Effective immediately, Headquarters organizations shall not pursue this course to meet future Headquarters support service requirements. All Operations Offices with responsibility for an operating contractor should, in the future, decline to process any such request from a Headquarters organization. These requirements must be processed as prime contracts through the Office of Procurement Operations in Headquarters. The only support service contracts which should be placed by operating contractors in the future are contracts to meet support service requirements of the operating contractor. Currently active subcontracts procured in this manner should not be modified to allow expenditures beyond current dollar limits or performance beyond current time limits. The prohibitions of this memo shall also apply to the Solar Energy Research Institute.

All Secretarial Officers should take immediate steps to identify any such support service subcontracts placed by their organizations in the past. Steps should be taken to ensure that performance on such subcontracts is completed in a reasonable fashion with particular concern for the position of the operating contractor which was used to place the subcontract. Planning should also be started for meeting the Headquarters requirements currently being filled by such subcontracts through normal support service contracting channels.

Any questions regarding this action should be directed to Ray Mayfield, Chief, Management Systems Development and Evaluation Branch (Attn: AD-242). Mr. Mayfield can be reached on FTS 252-6813.

William S. Heffelfinger
William S. Heffelfinger
Assistant Secretary
Management and Administration

Chairman ROTH. At this time, I would like to call forward James R. Richards, the Inspector General for the Department of Energy.

Mr. Richards, if you would raise your right hand, and the other gentlemen.

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RICHARDS. I do.

Mr. BLANEY. I do.

Mr. CROXTON. I do.

**TESTIMONY OF HON. JAMES R. RICHARDS, INSPECTOR GENERAL,
DEPARTMENT OF ENERGY; ACCOMPANIED BY RICHARD BLANEY,
ACTING ASSISTANT IG FOR INSPECTIONS; AND CHARLES CROX-
TON, DIRECTOR, AUDIT MANAGEMENT DIVISION, OFFICE OF
AUDITS**

Chairman ROTH. Please be seated.

I would appreciate it, Mr. Richards, if you would introduce the gentlemen accompanying you.

Mr. RICHARDS. Thank you, Mr. Chairman.

It is a pleasure to be here today. With me here this morning, on my right, is Mr. Richard Blaney, who is Acting Assistant Inspector General for Inspections, and on my left is Mr. Charles Croxton, who is one of our division managers in our Audit Division.

Mr. Chairman, I have a short statement.

Chairman ROTH. Your full statement will be included as if read.¹

Mr. RICHARDS. Mr. Chairman, members of the subcommittee, it is a pleasure to meet with you today to discuss the activities of the Office of Inspector General in reviewing the operation of the Department of Energy's laboratories and energy technology centers.

In hearings last year before the full committee, of which this subcommittee is a part, I stated that my first priority as Inspector General would be to conduct a vulnerability assessment of the Department.

I refer, of course, to the vulnerability of the Department's programs and operations to waste, fraud, and mismanagement. In November 1981, I established a task force to conduct two pilot assessments, develop a sound methodology, and make recommendations to the Department.

In December, we joined forces with the Assistant Secretary for Management and Administration on this effort. Since the Office of Management and Budget issued Circular A-123, which called for a vulnerability assessment of all agencies of Government, the joint task force has been instrumental in developing a vulnerability assessment program that is now underway in the Department.

By December of this year, all of the activities of the Department of Energy are to have been subjected to the assessment. This will identify programs and administrative functions that are highly vulnerable to waste, fraud, and mismanagement. The results of the assessment will help us focus our attention and deploy our resources where they are most needed.

¹ See p. 66 for the prepared statement of Hon. James R. Richards.

I might add parenthetically that what comes next after vulnerability assessments over A-123 is review of internal controls and internal control systems.

It was, of course, not necessary to await vulnerability assessments to determine that substantial attention needed to be given to the research and development facilities. I would like to tell you about some of the reviews we have conducted at these sites, but first a point should be made clear.

Most of the laboratories and energy technology centers have been in existence for decades. They have been the subject of management reviews and audits in the past by the field offices of the Department of Energy and its predecessor agencies. Hundreds of reviews have been made and reported upon in the past.

These reviews have concentrated primarily on functional activities such as travel, salaries, procurement, and property management. These are the same activities that are being discussed here today. Perhaps the continuation of these problems in the laboratories and energy technology centers may be explained in part by the fact that in the past the auditing was being performed by organizations which, because they reported to field managers, lacked the objectivity and independence of the Office of Inspector General.

It is well known that we argued, pursuant to the GAO recommendations, for the transfer of audit responsibility from the field offices into the Office of Inspector General. We have had some success in that regard. In January of this year, 46 audit positions were transferred from the DOE field offices to the Office of Inspector General, bringing our total staffing to 159 full-time equivalent positions and an operating budget of just in excess of \$8 million.

At the same time, audit cognizance over the research and development activities was transferred from the field into our office. We now have audit cognizance for our laboratories and technology centers, and the addition of 46 positions has allowed us to double our audit staff and quadruple the number of auditors assigned to the field.

We are now in a better position to conduct multilocation audits of functional activities at DOE's research and development facilities. Nevertheless, our resources remain among the most modest of all major Cabinet Departments.

We are assisted in our audit responsibilities by the Defense Contract Audit Agency, or DCAA, which provides about 120 staff years annually in conducting mainly preaward, and cost-incurred contract audits.

The field offices also have staff who conduct management reviews for the respective managers and who have oversight responsibility for the internal audit staffs of the Department operating contractors.

The Office of Inspector General also has an Office of Inspections responsible for reviewing the Department's scientific and technical programs and operations. Many of these inspections have involved activities at the Department's laboratories and energy technology centers.

Over the last 3 years, for example, the inspections staff has conducted reviews of selected programs at over a dozen national laboratories and energy technology centers.

In my statement, Mr. Chairman, I summarize some of the reviews that have been done by inspections and by our audit staffs. Full reports and these summaries, of course, have been made available to staff for questioning. I will not repeat them here.

I would like to briefly mention some ongoing projects within our office directed at the Department's laboratories and energy technology centers. These include a review of the Mirror Fusion Test Facility at the Lawrence Livermore National Laboratory; an interagency audit under the auspices of the President's Council on Integrity and Efficiency to examine accountability of Government property located at a number of DOE laboratories; a survey of the Department's energy technology centers; a review of the Department's program to immobilize defense nuclear wastes; a review of the Tokamak Fusion Test Reactor, which is one of the most important and most expensive projects in the magnetic fusion programs; and a review of the Department's check and balance system as it concerns the safeguards, security, and safety, of special nuclear material.

Before concluding my statement, I would like to present a short summary of our investigative efforts at the Department's research and development facilities. Our office's investigative staff has handled 60 cases related to the Department's laboratories and energy technology centers since the beginning of 1980.

Of these, 38 investigations have been completed, and 22 matters remain open and under investigation. Results of the completed investigations include four arrests; 12 administrative actions, ranging from suspension to termination of employment of Department and contractor employees; and recovery of about \$85,000.

The cases have involved a broad range of allegations, such as misappropriation of Government funds, misuse of Government property, theft of precious metals, and conflicts of interest.

The investigations have derived from a number of sources, including the IG Hotline and the proactive activities of our field investigators. This program has been particularly successful with respect to the laboratories and energy technology centers where we are able to have staff stationed at, or near, these facilities.

At present, we have investigative staff stationed at Chicago, Oak Ridge, Richland, Albuquerque, and San Francisco. We are also planning to assign a full-time investigator to Idaho Falls.

When allegations concern possible violations of title 18 of the United States Code, conflict of interest, or any other Federal criminal statute, we work closely with the Federal Bureau of Investigation.

In fact, we have recently concluded a written memorandum of understanding with the FBI, which formally establishes, for the first time, policy for the Bureau and our office with respect to the referral and investigation of matters of mutual interest. This step will significantly enhance our ability to investigate and present more rapidly cases to U.S. Attorneys for prosecutive action.

We also receive information leading to investigative cases concerning laboratories and energy technology centers from the Department's Office of Safeguards and Security. DOE Order 5633.1, dated July 28, 1980, requires, among other things, that all violations and losses known by DOE employees and DOE contractor and subcontractor employees be reported to the Office of Safeguards and Security.

At present, we are working to improve and expand our relationship with the Office of Safeguards and Security to obtain better, more timely information regarding any allegation of theft or other improper activities, so that we will be better able to carry out our responsibilities under the DOE Organization Act with respect to such matters.

We are particularly enthusiastic about an ongoing joint project with the Office of Safeguards and Security. In fact, the project began just today. The project involves a study of insider crime at DOE to provide us with a more comprehensive understanding of the characteristics of insider crime and criminal conduct as they relate to the Department's facilities and responsibilities.

The study is especially geared to focus on such activities at the laboratories and energy technology centers. We are confident that the study will provide both our office and the Office of Safeguards and Security with information that will better enable us to carry out our respective responsibilities and duties.

In closing, we believe that we have deployed our limited resources in a manner to allow us the maximum impact on fraud, waste, and mismanagement in the Department.

I will be happy to answer any questions, Mr. Chairman, you or the staff might have.

Chairman ROTH. Mr. Weiland?

Mr. WEILAND. Mr. Chairman, I would first like to thank the Inspector General for the courtesy that he and his staff have shown the subcommittee staff over the course of the last several months.

We have met with him and his people on numerous occasions.

Mr. Richards, I understand that you have seen a copy of the GAO statement of facts that was presented here this morning.

I would like to first ask what your reaction in general terms is to that particular paper?

Mr. RICHARDS. Some of the GAO findings are quite disturbing. For example, we have, I think as the chairman and GAO have noted in their testimony, merely pecked around the edges previously in providing audit responsibility and audit coverage in the labs and energy technology centers.

What little activity we have had in the past, both with audits and inspections, seems to confirm the general things that GAO is finding, that there are weaknesses, perhaps not in the internal controls themselves, but in DOE's monitoring of internal controls with subjects like management of property and accountability of property.

That is why we undertook in this interagency audit with the Department of Defense lead, to examine about 10 sites throughout the country, including a number of our labs, with regard to property accountability. Directed procurement is another problem that recently came to my personal attention through the manager of the Chicago operations office, who alerted me to a case which appeared to be clearly in violation of the Assistant Secretary's memorandum of last August which you spoke of and entered into the record.

Mr. WEILAND. That was a directed procurement that was taking place after the date of this August 1981 memo?

Mr. RICHARDS. Indeed, those seem to be the facts. And it was open and notorious. There was no attempt to hide it, as I saw it, in the exchange of memoranda. The person in headquarters who was at-

tempting to direct the procurement was well identified as were the people in the field who were objecting, but it is disturbing that this kind of activity is tried openly after it becomes clear that it is top management's determination that directed procurement not be done.

Apparently, there is still a small crack by way of interpretation between the Assistant Secretary's memorandum and DOE order issued, I believe, in January of this year, where it may be possible in given cases to still get around those two directives and still do directed procurements.

It is a situation that we are going to look into.

Mr. WEILAND. Mr. Chairman, we also have the DOE order that Mr. Richards has just referred to.

I would like to ask that it be included in the record as an exhibit.

Chairman ROTH. So ordered.

[The document referred to was marked "Exhibit No. 2," for reference, and follows:]

EXHIBIT NO.2

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 4200.3

1-15-82

SUBJECT: MANAGEMENT OF SUPPORT SERVICES CONTRACT ACTIVITY

-
1. PURPOSE. To provide the policy, procedures, and responsibilities for the management of support service contracts within the Department of Energy (DOE).
 2. CANCELLATIONS.
 - a. DOE 1370.1, REVIEW AND APPROVAL OF SUPPORT SERVICES PROCUREMENT REQUIREMENTS, of 6-5-78.
 - b. DOE N 1370.1, REVIEW AND APPROVAL OF CONSULTING SERVICE PROCUREMENT REQUIREMENTS, of 2-25-80.
 - c. DOE N 1370.2, REVIEW AND APPROVAL OF CONSULTING SERVICE PROCUREMENT REQUIREMENTS, of 7-1-80.
 - d. DOE 4220.2, ROLE OF CONTRACTOR PERSONNEL IN POLICY DEVELOPMENT AND IN REPRESENTING THE GOVERNMENT, of 9-8-80.
 3. SCOPE. This Order applies to all contracts and tasks to provide support services directly to the Department, including contracts and tasks performed:
 - a. By any business enterprise, association, foundation, or educational institution; or
 - b. Pursuant to the terms of an interagency agreement with any other Federal Agency when the primary purpose of the support service contract is to support a DOE program.
 4. REFERENCES.
 - a. DOE 1270.1, INTERAGENCY AGREEMENTS, of 6-13-79, which provides guidance on the use of interagency agreements for obtaining support services.
 - b. DOE 1360.1, ACQUISITION AND MANAGEMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT AND RESOURCES, of 8-9-78, which identifies the requirements for reviews when ADP resources are required.
 - c. DOE 4210.4, POLICY AND PROCEDURES ON UNSOLICITED PROPOSALS, of 6-20-80, which provides processing procedures for the receipt and review of unsolicited proposals.
 - d. Office of Management and Budget (OMB) Circular A-49, "Use of Management and Operating Contracts," 44 FR 37192, which provides guidance on cost reimbursement contracts with firms which administer research and development establishments wholly devoted to Government work or Government research and development programs; or administer and operate Government owned or leased industrial facilities.
 - e. OMB Circular A-76, "Policies for Acquiring Commercial or Industrial Products or Services for Government Use," 45 FR 1952, which specifies that Government employees must perform those functions which are essential to retaining control over the conduct of Government programs.
 - f. OMB Circular A-120, "Guidelines for the Use of Consulting Services," 45 FR 30197, which provides policy guidance on the use of consulting support service contractors.
 - g. Federal Personnel Manual Letters 300-8 of 12-12-67 and 300-12 of 8-20-68 which provide guidance concerning employer-employee relationships between Government and contractor personnel.

- h. DOE 1450.1A, ACQUISITION, UTILIZATION, AND ADMINISTRATION OF TELEPROCESSING SERVICES of 11-3-81, which governs Departmental implementation of the General Services Administration (GSA) Temporary Regulation F-495, "Sharing and Procurement of ADP Services."
- i. HQ 1360.4, AUTOMATIC DATA PROCESSING TERMINAL ADMINISTRATION, of 5-30-80, which provides procedures for the administration and acquisition of terminal equipment at Headquarters.
- j. Department of Energy Procurement Regulations 59-1.5304 which sets standards for the exercise of contract options.
- k. Department of Energy Procurement Regulations 59-50.001 which defines operating and on-site service contracts.
- l. Federal Procurement Data System Product and Service Codes of 4-80 which assigns reporting codes for government contracts based on the nature of what is procured.

5. DEFINITIONS.

- a. Government Management Functions. Those functions so intimately connected with Government operations that they must be performed by Government employees in order to retain essential control and responsibility. These functions involve exercising discretionary authority and making final value judgments which affect the day-to-day and long term development, execution, and evaluation of Government programs. Government management functions include but are not limited to:
 - (1) Assignment and evaluation of organizational responsibilities;
 - (2) Establishment of employment goals and priorities;
 - (3) Selection and direction of Federal employees;
 - (4) Evaluation of Federal employee performance;
 - (5) Development of budget policy, guidance, and strategy;
 - (6) Determination of acquisition strategy and procurement plans;
 - (7) Selection of procurement sources;
 - (8) Acting in a fiduciary capacity in the control and disbursement of Government funds;
 - (9) Determination of the success or failure of DOE internal management and program management activities;
 - (10) Determination of internal reporting requirements;
 - (11) Determination of requirements and design of management information systems;
 - (12) Determination of requirements for and final design of program or project management systems;
 - (13) Determination of environmental impacts of energy policies and projects;
 - (14) Determination of economic barriers and tradeoffs for particular energy technologies;
 - (15) Establishment of technical performance criteria for energy technologies;
 - (16) Establishment of any regulation;
 - (17) Determination of the legality of proposed policies;
 - (18) Making final determinations on the performance of DOE demonstration projects;

- (19) Determination and advocacy of legislative initiatives on behalf of the Department;
- (20) Representation of DOE in policy matters;
- (21) Determination of energy production and consumption targets;
- (22) Establishment of performance goals, priorities, and schedules; and
- (23) Establishment of assumptions for scientific and economic models.

b. Support Services. All services and activities required by the Government to support the development and execution of assigned functions and programs. They do not include the exercise of discretionary authority which is the essence of a Government management function. Support services may be performed by Government employees or by contractor. Support services include the following:

- (1) Commercial and Industrial Support Services. As described in OMB Circular A-76, those services and products which can be identified with an organization or a type of work, meet recurring needs of an operational nature, and are separable from other needs so as to be suitable for contracting. Those services are generally of a type used in the private sector, and for which a private sector business community exists. Government review and decisions are not required to fulfill the requirements of commercial and industrial support service contracts, though the Government must monitor performance to ensure conformity with contract specifications. Examples of commercial and industrial support services are:
 - (a) Provision of audiovisual products and services;
 - (b) Automatic data processing, including systems engineering, systems analysis, programming, operation, and data entry;
 - (c) Maintenance, overhaul, and repair services;
 - (d) Manufacturing, fabrication, processing, and packaging;
 - (e) Carpentry, plumbing, and electrical work;
 - (f) Health services for Government employees;
 - (g) Security, mail handling, janitorial, and courier services;
 - (h) File room operation and library services; and
 - (i) Word processing and data reduction services.
- (2) Management and Professional Services, and Special Studies and Analyses, as identified in Section I Part B of the Federal Procurement Data Systems Product and Service Codes.
- (3) Consulting Support Services, as identified in OMB Circular A-120, are services of a purely advisory nature relating to the Government management functions, as defined in paragraph 5a.

c. Management Controls are the means by which the Government seeks to ensure that Government management functions are not performed by contractors. These controls may be considered adequate when provisions have been made to ensure that:

- (1) The Government has adequate basic management resources and technical core capabilities available in-house to make the value judgments and exercise the discretionary authority required to retain control by the Government; and
- (2) Government personnel review the work of support service contractors at each stage of contract performance where value judgments must be made or discretionary authority must be exercised in order to retain control by the Government. Necessary decisions are made by Government personnel.

- d. Support Service Request. For purposes of this Order, all documentation required to perform an adequate review of each proposed support service contract for compliance with the policies of this Order. The contents of a support service request are specified in paragraph 8c.
6. POLICY. No contract for support services will be deemed to be in the best interest of the Government if it is not consistent with the following policies:
- a. No contractual arrangement may be used to create what is tantamount to an employer-employee relationship between Government and contractor employees (see "Pellerzi Opinion," FPM Letters 300-8 and 300-12).
 - b. The Department shall not enter or maintain any contractual arrangement which results in contractor performance of Government management functions as defined in paragraph 5a, above. A contractor may be used to perform analyses and render advice related to a Government management function only if adequate management controls, as defined in paragraph 5c above, are provided by the requesting organization.
 - c. The Department shall not enter or maintain a support services contract under any of the following conditions:
 - (1) The requesting organizational element has been staffed to provide the service;
 - (2) Services are readily and economically available within DOE or another Federal Agency;
 - (3) The services are readily available and may be provided through other means at a substantial savings in cost to the Government;
 - (4) The services are not essential to the effective execution of the program; or
 - (5) For any other reason it is not in the best interest of the Government to acquire the services by contract.
 - d. Contractor involvement in issues relating to the establishment or alteration of Departmental policy, programs, or plans, or addressing issues for which there is no established policy, must be avoided. The following are specific prohibitions for use of a contractor:
 - (1) Initiating or originating draft testimony or presenting, as a representative of the Government, testimony before a congressional committee or regulatory body;
 - (2) Editing transcripts of congressional committee or regulatory body hearings or drafting, without attribution, inserts to transcripts;
 - (3) Speaking before public or private groups as a representative of the Department;
 - (4) Initiating or originating drafts of official documents and correspondence which are intended to represent the policies or plans of the Department;
 - (5) Contacting, on behalf of the Department, Members of Congress, congressional committees, staff members, or officials of State or foreign governments through letters;
 - (6) Drafting official correspondence to State and local governments;
 - (7) Drafting official correspondence to congressional offices except to provide routine information requested in constituent mail; and
 - (8) Drafting official responses to correspondence requiring substantial technical research, where the response reflects a Departmental policy position.
 - e. The period of performance for support services contracts subject to the review under this Order shall be no longer than 5 years, including options. The basic contract may be for up to 3 years unless there is a valid justification for a longer period of performance. Exercise of successive 1-year options to extend the support services for up to 5 years are to be based on contractor performance, availability of funds, a continuing need for the services, and a determination by the organization sponsoring the contract that exercising the option is in the best interest of the Government (DOE-PR 9-1.5304).

- f. Where a contractor is used to assist in the drafting of legislative initiatives, implementing regulations, or similar products, the Department will take steps to ensure that the contractor will not be, or appear to be, improperly influencing or promoting the product.
- g. The Department is committed to a continuing program of review of active-support service contracts to assess compliance with existing policies, to initiate steps to ensure the propriety of current contractual arrangements, and to make improvements in the use and management of support service contractors.
- h. DOE employees are solely responsible for determining work requirements under support service contracts and preparing statements of work. A support service contractor must not be allowed to identify its own work requirements or write its own task assignments. However, this policy is not intended to preclude a contractor from preparing and submitting proposals for work in response to written Government requests or as unsolicited proposals.
- i. Generally, purchase or lease of ADP hardware items (automatic data processing terminals, computing equipment, communications equipment, and word processing equipment), particularly for use in Government facilities, is not an appropriate use of support service contract funds. Such acquisitions should be accomplished using other appropriate procurement instruments.
- j. No DOE Element shall direct a DOE operating or onsite service contractor to procure a subcontract to provide support services directly to a DOE Element.

7. RESPONSIBILITIES AND AUTHORITIES.

a. Assistant Secretary, Management and Administration (MA-1).

- (1) Reviews the support service request for each request which may exceed \$250,000 to ensure that the proposed action conforms to policies concerning the use of support service contractors. No contract subject to this review may be entered until authorized pursuant to this authority.
- (2) Serves as principal point of contact within the Department regarding policy decisions on the management and use of support services contracts.
- (3) Ensures that support service contracts will not be used as a device to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures, or to establish employer-employee relationships between Government and contractor personnel.
- (4) In cooperation with the head of the subject organization, performs periodic reviews of active support service contracts within DOE organizations to assess compliance with the provisions of this Order and other applicable Governmentwide and DOE regulations.
- (5) Determines whether a requirement for contractual services is subject to the provisions of this Order, and authorizes exceptions as appropriate.
- (6) Maintains financial and other inventories mandated by OMB Circular A-76, and ensures that cost comparison analyses required by that circular are performed.

b. Secretarial Officers and DOE Staff Officers.

- (1) Prepare support service requests for their organizations as outlined in paragraph 8, below.
- (2) Ensure that the performance of all support service contracts being used to support their organizations conform with the procedural requirements and policy guidelines of this Order.
- (3) As appropriate, review and endorse requests originating in field organizations.
- (4) In cooperation with the Assistant Secretary, Management and Administration, participate in the periodic review of active support service contracts supporting their organizations.

c. Heads of Field Organizations.

- (1) Prepare support service requests as outlined in paragraph 8, below.
- (2) Ensure that the performance of all support service contracts being used to support their organizations conform with the procedural requirements and policy guidelines of this Order.
- (3) Ensure compliance with procurement rules and regulations on support service contracting.
- (4) In cooperation with the Assistant Secretary, Management and Administration participate in the periodic review of active support service contracts supporting their organizations.

- d. General Counsel (GC-1). Reviews each proposed support service contract which may exceed \$250,000 for compliance with existing laws and regulations, and advises the requesting organization and the Assistant Secretary, Management and Administration, as to the legal sufficiency of the proposed procurement.

e. Contracting Officers.

- (1) Determine whether a proposed contract is for support services and, if so, whether the support services constitute consulting support services.
- (2) Ensure that review requirements of paragraph 8 of this Order are met on all support service contracts.

8. REVIEW REQUIREMENTS.

- a. The following types of support service contracts are exempted from the review requirement detailed below:

- (1) Research and development (R&D) contracts unless the primary purpose of a task under an R&D contract is for support services described in 5b(1)-(3);
- (2) Architectural and engineering services;
- (3) Construction and construction management services;
- (4) Operating and on-site service contracts (DOE Procurement Regulation 9-50.001(a)); and
- (5) Production contracts and the services thereunder.

- b. No contractual support services other than those listed in 8a, above, shall be procured until a support services request for the proposed support services action has been reviewed and authorized by an official at an appropriate level to ensure that it conforms to the provisions of this Order. The review requirements in paragraphs 8b(1) and (2), below, are triggered when the cost of a proposed contract, including options, exceeds the stated threshold or when an existing contract is modified to allow costs in excess of the stated threshold. When the \$250,000 threshold is exceeded due to a modification, the original support service request prepared and authorized pursuant to paragraph 8b(1), below, may be submitted, with updated cost information, for review under paragraph 8b(2) below.

- (1) Support service requests for which the total contract cost, including options, will not exceed \$250,000 must be reviewed and authorized by officials at the Secretarial Officer or Staff Officer level. Heads of Field Organizations may also authorize contract requests up to this dollar level where the program being supported has been formally decentralized for field management and procurement. Secretarial Officers and Staff Officers may delegate this signature authority to one individual within their organization by filing a written delegation of authority with the Assistant Secretary, Management and Administration. For proposed contracts for which the cost, including options, is in the range of \$50,000 to \$250,000, a copy of the support service request must be submitted to the Management Systems Development and Evaluation Branch (MA-242) for information purposes.

- (2) Support service requests for which the contract cost, including options, may exceed \$250,000 must be reviewed and authorized as in paragraph 8b(1), above. In addition, requests at this level must be transmitted to the Assistant Secretary, Management and Administration through the Office of General Counsel. The Assistant Secretary, Management and Administration, will review the request for conformity with the provisions of this Order and, as appropriate, authorize the requesting organization to proceed with the procurement.
 - (a) Requests at this dollar level originating in a field organization must be endorsed by the Secretarial Officer or Staff Officer of the Headquarters organization responsible for the program prior to review by the Assistant Secretary, Management and Administration.
 - (b) Field Counsel review of field originated requests may be substituted for the Office of General Counsel review.
 - (c) No support service procurement at this dollar level may be executed without review and authorization by the Assistant Secretary, Management and Administration.
- c. The requesting organization prepares the support service request. Each request must include:
- (1) The signature of the Secretarial Officer, Staff Officer, or Head of the Field Organization in whose organization the requirement originates;
 - (2) The statement of work for the proposed contract; and
 - (3) An analysis of the proposed action which includes the following items:
 - (a) An estimate of the cost (including options), the proposed period of performance (including options), and an estimate of the staffing requirement for each category of labor.
 - (b) A brief description of the program to be supported by the proposed contract including statements on:
 - 1 The programs being managed by the requesting organization;
 - 2 The current workload and staffing levels for the organization;
 - 3 Why the product of the proposed contract is essential to the program mission; and
 - 4 The authority under which the program operates (statutory base, functional statement, OMB guidance, or other).
 - (c) A brief justification for performing the work through the use of a contract, including:
 - 1 Why the particular skills identified in paragraph 8c(3)(a), above, are required for the work;
 - 2 Alternatives to contractor performance, including the use of inhouse resources and resources of other Federal Agencies, and why each of these alternatives is not recommended; and
 - 3 A description of reasonable efforts made to ascertain that the required product or service is not already available to the program from within the Federal Government.
 - (d) A statement describing the adequacy of management controls over the proposed contractor effort including an analysis of:
 - 1 The program staff resources which will be available for monitoring and reviewing contractor performance; and
 - 2 The respective decisionmaking roles of the contractor and the Government during performance of the proposed contract.

- (e) A brief description of how work will be assigned to contractor personnel and a statement indicating whether or not each of the following conditions will exist in the proposed contractual arrangement:

- 1 Performance on Government site (detail any Government space requirements including approximate square feet);
- 2 Principal tools and equipment furnished by the Government;
- 3 Services will be applied directly to an integral effort of the requesting organization in furtherance of an assigned mission or function;
- 4 Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel;
- 5 The need for the type of service provided can reasonably be expected to last beyond 1 year; and
- 6 The inherent nature of the service, or the manner in which it is provided, reasonably requires direct or indirect Government supervision of contractor employees in order to:
 - a Adequately protect the Government's interest; or
 - b Retain control of the function involved; or
 - c Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

- (f) A description of any automatic data processing terminals and computing, telecommunications, or word processing equipment which will be leased or purchased under this contract, including how and where such equipment will be used.

- d. If the support service request meets the review threshold identified in paragraph 8b(2), above, the original of the request package should be addressed to the Assistant Secretary, Management and Administration, through the Office of General Counsel (ATTN: GC-44) unless reviewed by Field counsel per 8b(2)(b). The procedure is expedited if an advance copy is sent to the Assistant Secretary, Management and Administration (ATTN: MA-242).
- e. Normally, 10 working days will be required for review by the Office of General Counsel and by the Assistant Secretary, Management and Administration. That review will result in a memorandum to the requesting organization giving or denying authorization to proceed with the procurement process.
- f. In order to minimize the procurement processing time, this procedure may be completed concurrently with other preprocurement processes as long as no request for proposal is issued or, in the case of a sole source procurement, no final negotiations are conducted prior to the receipt of the authorization.
- g. Requesting organizations are encouraged to direct inquiries concerning these procedures to the Management Systems Development and Evaluation Branch (MA-242).
- h. Any appeal of a decision by the Assistant Secretary, Management and Administration, must be made in writing to the Deputy Secretary (S-2).



William S. Heffelfinger
Assistant Secretary
Management and Administration

Mr. WEILAND. What about your own priorities, Mr. Richards? You mentioned this vulnerability assessment you are involved in. What are your other priorities in the IG Office?

Mr. RICHARDS. One of our major priorities is to give better audit coverage and inspection coverage to the Department's financial and accounting systems. This has been a nagging problem in DOE since its inception. We are presently in the process of developing our 1983 work plan for both audits and inspections. And our program guidance document established financial management audits as the first order of priority and would include cost management, letters of credit, implementation according to circular A-123, which I just spoke of, debt collection and revenue producing activities. We also put directed procurement as a top subject, along with contracts, EDP management, Federal assistance programs management and, finally, recipients of Federal financial assistance as some of our priorities in the coming year.

Mr. WEILAND. Do you, by any chance, have the Memorandum of Understanding with the FBI with you this morning?

Mr. RICHARDS. I think the staff has it in my briefing book.

Mr. WEILAND. Would you submit that for the record?

Mr. RICHARDS. Surely.

[The material referred to was marked "Exhibit No. 3," for reference and follows:]

EXHIBIT NO. 3

MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL BUREAU OF INVESTIGATION
AND THE INSPECTOR GENERAL
DEPARTMENT OF ENERGY

This memorandum constitutes an agreement between the Office of Inspector General (IG), U.S. Department of Energy (DOE), and the Federal Bureau of Investigation (FBI).

A. PURPOSE

The purpose of this agreement is to establish policy for the FBI and the IG for DOE with regard to the referral and investigation of matters of mutual interest involving potential violations of Federal criminal statutes, and other matters of mutual interest.

B. APPLICABLE AUTHORITY

Section 208 of the Department of Energy Organization Act, of August 4, 1977, Public Law 95-91, established within the Department of Energy an Office of Inspector General, with statutory authority to conduct investigations relating to DOE programs and operations.

The FBI derives its criminal investigative jurisdiction from Titles 18 and 28 of the United States Code, the Code of Federal Regulations and through the Attorney General of the United States.

Section 535 of Title 28, United States Code, specifically sets forth the FBI's authority to investigate violations of Title 18 involving Government officers and employees. Further, this statute also imposes upon every Department and Agency head of the Executive Branch of the Government a duty to report expeditiously to the Attorney General any information, allegations, or complaints relating to possible violations of Title 18 involving officers or employees of the Government unless the responsibility to perform the investigation of that violation is, by law, specifically assigned elsewhere.

C. POLICY

This memorandum acknowledges the role of the FBI in investigating certain violations of Federal criminal law and the statutory mandate of the Inspector General to investigate and report on matters which involve the programs and operations of DOE.

This memorandum delineates distribution of each party's investigative responsibilities so as to utilize most efficiently the limited resources which are available. It is recognized that the efforts of the FBI will be directed at the investigation of certain criminal activity involving DOE programs and functions, either referred by the IG or initiated by the FBI. The efforts of the IG will be directed at both the detection and prevention of fraud, waste, abuse, and inefficiency and at the conduct, supervision and coordination of IG audits and investigations relating to the programs and operations of DOE.

D. RESPONSIBILITIES OF THE IG

1. The IG will refer to the FBI, upon receipt, all specific allegations of bribery, attempted bribery, and other specific, significant allegations of corruption which culpably involve U.S. Government employees.
2. The IG will refer to the FBI, upon receipt, all information pertaining to matters involving the element generally known as "organized crime", including both traditional (La Cosa Nostra) and nontraditional (other criminal ethnic groups or outlaw motorcycle gangs), whether or not the matter is considered prosecutable.
3. The IG will investigate all other criminal matters arising from and pertaining to DOE programs, functions and personnel. The IG may refer to the FBI those criminal matters which require the resources or expertise of the FBI for proper investigation. In cases involving major incidents and/or widespread or ongoing criminal activity where the IG proceeds alone with an investigation, the IG will notify the FBI of this fact.
4. The IG will investigate all administrative and civil matters arising from and pertaining to DOE programs, functions and personnel that do not involve violations of Federal criminal statutes. Certain civil investigations arising from criminal cases investigated by the FBI may, however, be handled by the FBI.
5. To the extent possible, the IG will provide assistance to the FBI upon request.
6. The IG will be the focal point of liaison functions between DOE and the FBI with regard to the criminal matters that are the subject of this agreement and will be responsible for the security, control and dissemination of FBI reports, or other written and oral communications related to these matters. The IG will abide by the "third party rule" in regard to FBI documents, i.e., will obtain FBI approval prior to disseminating FBI-originated documents.

E. RESPONSIBILITIES OF THE FBI

1. The FBI will have the primary role in investigating bribery, attempted bribery and specific, significant allegations of corruption which culpably involve U.S. Government employees and all matters involving organized crime. The FBI will respond to allegations of bribery within one workday or less, as appropriate. The FBI will assume investigative responsibility for other significant criminal investigative matters referred by the IG, consistent with the availability of investigative resources within the appropriate FBI field office. The FBI will promptly notify the IG if it will not assume investigative responsibility for a matter referred to it, so that the IG may proceed to address the matter on a timely basis.

The primary objectives of these FBI investigations will be:

- a. To provide evidence leading to the prosecution of individuals believed to have violated Federal criminal statutes;
- b. As an ancillary result of a criminal investigation, to provide, through the IG, information potentially useful to DOE in taking any necessary corrective action for the purpose of averting the recurrence of fraud, waste or inefficiency; and

- c. As an ancillary result of a criminal investigation, to provide, through the IG, information useful to DOE in taking specific administrative action against DOE employees or other individuals or entities who were involved in the investigation.
2. The FBI maintains the option to investigate any criminal allegations involving DOE's programs or functions, which the FBI receives independently.
3. The FBI will promptly notify the IG of the initiation of investigations which are predicated on other than an IG referral, unless disclosure might endanger the safety of FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation.
4. The FBI recognizes the importance of expeditious investigation and reporting in situations where:
 - a. The subject(s) of the investigation is a DOE employee;
 - b. The subject(s) of the investigation is continuing to do business with DOE; and
 - c. The subject(s) of the investigation is under consideration to receive benefits which would involve DOE.
5. Upon request of the IG, the FBI will promptly notify the IG of developments during the investigation, unless disclosure might endanger the safety of FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation.
6. The FBI will promptly furnish the IG with a written summary of findings at the conclusion of an investigation and the nature of judicial action, if any, taken. If administrative or civil action is being considered by DOE, the FBI will, upon written request, provide for the sole use of DOE, existing detailed investigative data, exclusive of any Federal grand jury or other material, the disclosure of which is not deemed to be in the best interest of FBI operations.
7. Except as provided in Paragraph E(6), the FBI will promptly furnish, at the conclusion of the investigation, and upon receipt of a written request identifying the exact data needed, FBI investigative documents and Special Agent testimony for use in administrative proceedings, consistent with regulations contained in Attorney General Order 919-80, effective December 4, 1980, concerning the release of Departmental documents in Federal or State proceedings.
8. The following services will be provided to the IG by the FBI:
 - a. Appropriate name checks;
 - b. Laboratory examinations;
 - c. National Crime Information Center inquiries;
 - d. Appropriate identification record searches;
 - e. The FBI will provide desired relevant training to IG personnel, as resources permit; and
 - f. Any other services normally available to Federal investigative agencies.

F. RESPONSIBILITIES CONCERNING JOINT ENDEAVORS BY THE FBI AND IG

1. The FBI and the IG may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. The specific details of each endeavor, including resources to be committed, the delegation of responsibility, liabilities, etc., will be determined prior to the commencement of these endeavors. While differing circumstances will result in varied arrangements from project to project, the following conditions shall apply to all joint endeavors:

- a. Participating personnel will be supervised by their respective agencies;
- b. Only one evidentiary document, such as a record of interview, will be prepared;
- c. Any contact with the news media, such as press releases, will be coordinated and agreed to in advance by both the FBI and the IG; and
- d. In the case of undercover operations, a separate written agreement for both the FBI and the IG will be required setting forth their respective responsibilities as they pertain to manpower, economic and other resources to be committed and/or other conditions necessitated by the operation. Control of joint undercover operations will be the responsibility of the FBI.

2. All joint criminal investigations will be conducted under the supervision and control of the FBI.

3. Close and continuous liaison will be maintained between the IG and the FBI in an attempt to identify areas that require mutual attention. In this regard, both the IG and the FBI will designate an appropriate individual to serve as the primary contact for the liaison function.

G. AMENDMENTS

This agreement can be amended with the mutual consent of both parties.

H. TERMINATION

This agreement will remain in effect until terminated by written notice by either party. The written notice will be provided at least 60 days prior to the termination date desired.

I. AGREEMENT APPROVAL

This agreement becomes effective when approved and signed by both parties.

APPROVED:

APPROVED:

Chris B. Revell
 ASSISTANT DIRECTOR
 CRIMINAL INVESTIGATIVE DIVISION
 FEDERAL BUREAU OF INVESTIGATION

James R. Richards
 INSPECTOR GENERAL
 UNITED STATES DEPARTMENT OF
 ENERGY

June 7, 1982
 DATE

6-7-82
 DATE

Mr. WEILAND. Thank you, Mr. Chairman.

Chairman ROTH. Mr. Richards, one of my principal concerns is that the Government has instituted adequate controls and checks to insure that under this kind of contract, the money is well spent. I would urge you and the auditors to review that aspect of these operations.

As I said earlier this morning, my concern is that with a fixed price contract, there is no kind of incentive built into this kind of an operation since the contractor is entitled to be reimbursed for all expenses properly incurred under the contract. I am not certain from what I have read and heard this morning that we have adequate checkpoints or adequate procedures. So I hope time and attention will be paid to this. It is obvious by the operation you want more flexibility. That is why these plants are operating under GOCO type of plants.

I am not quarreling with that. What I do want to make certain is the Department of Energy has instituted adequate procedures to insure procedures and tactics followed by these laboratories are maximizing the use of the taxpayer dollar. I do want to thank you for your cooperation and help in this investigation.

Mr. RICHARDS. Thank you, Mr. Chairman.

Chairman ROTH. Jan Mares, please come forward.

Again, we will have to swear you in and the gentleman accompanying you.

Do you swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARES. I do.

Mr. D. BAUER. I do.

Mr. R. BAUER. I do.

Mr. RAUCH. I do.

Mr. RYAN. I do.

TESTIMONY OF JAN MARES, ACTING UNDER SECRETARY, DEPARTMENT OF ENERGY, ACCOMPANIED BY DONALD L. BAUER, DEPUTY ASSISTANT SECRETARY FOR FOSSIL ENERGY; ROBERT H. BAUER, MANAGER, CHICAGO OPERATIONS OFFICE; HILARY J. RAUCH, DIRECTOR, PROCUREMENT AND ASSISTANCE MANAGEMENT; AND P. MARSHALL RYAN, COMPTROLLER

Chairman ROTH. Please be seated.

As you probably heard me say earlier, you may either read—I guess you have a summary of your statement. But your full statement will be included as if read.¹ Please proceed.

Mr. MARES. Mr. Chairman and members of the subcommittee, I have an abbreviated statement which I would like to read, which summarizes some of the aspects of the statement submitted for the record.

I appreciate this opportunity to discuss with you the Department of Energy's interest in, and commitment to, insuring both efficient and effective management of the operations of our major government-owned, contractor-operated laboratories and our federally staffed Energy Technology Centers.

¹ See p. 74 for the prepared statement of Jan W. Mares.

I would like to present my summary comments from a more personal perspective.

As you know, my experience as Acting Under Secretary is only a few short weeks in duration, but my tenure as Assistant Secretary for Fossil Energy qualifies me as an 11-month veteran in the areas under discussion today.

My preliminary analysis is that, following a period characterized by rapid and dynamic programmatic growth, we have devoted the effort necessary to insuring that effective policies, systems, and procedures are now in place in the areas reviewed by the General Accounting Office (GAO). I might say, at the conclusion of Mr. Bowsher's statement this morning, I think he agreed with that statement.

After reading GAO's Statement of Facts, it is clear that we have to work harder on insuring that our policies and procedures are more uniformly and effectively implemented. Based on my relatively quick review of the Draft Statement, without the benefit of a detailed final report, I am both heartened and disturbed. Heartened in that I believe, based on review with our staff, that there is no fundamental policy, procedural, or systems breakdown that would require major rethinking or restructuring; but disturbed by the serious transactional problems that appear to have occurred. Some of these, I am pleased to report, had already been identified by our own internal system and have been corrected. Others, having been pointed out to our Operations Officers and Energy Technology Centers during the individual GAO audits, are already in the process of being corrected.

I think we heard this morning from Senator Percy about the work the Argonne Laboratory has reviewed with him, and their report has been made available to the subcommittee.

In a few areas, we will require more information than we can derive from the Draft Statement in order to review and determine the problem, followup on it, and fix it. My general impression is that our followup actions need to be improved in some cases, and I am committed to that goal.

As some of you may know, Secretary Edwards has conveyed to Congress his commitment to a comprehensive, effective, and prompt improvement in the Department's financial and audit systems. The Comptroller General is expected to review and comment on DOE's financial management improvement plan in the next few months. DOE will then adjust that improvement plan in a manner that will be meaningful and effective. We would expect to do likewise in the areas under discussion today, once we have received and had an opportunity to analyze and review the final GAO report.

We recognize that we might have done certain things better during the early years of our still young department. We will be very careful that, in this period of reducing some major program activities, we do not exacerbate any problems created during our rapid, early growth. We believe the systems and policies in place, and our improved diligence in implementing them, will insure that, I will participate in this effort personally. Through the DOE Audit Review Council, a mechanism exists to insure that any systems problems come to the attention of my office.

In addition, the operations offices are responsible for the effective execution of our policies in this area. Organizationally, the managers of these offices report directly to me. We will work together to make certain that effective implementation of sound policies will be carried out with the highest standard of quality. Bona fide problems will be dealt with in a timely fashion and adequate followup will be undertaken to assure appropriate action has been taken.

We have not had a meeting of the operations managers since we received the statement of facts. It is quite clear that is going to be on the agenda for our next meeting, and we will pay a lot of management attention to it.

In summary, we believe the Department's policies and systems meet Federal requirements. Our initial review has shown most of the items included in the statement of facts are not of a policy or systems nature.

We need, however, to better address the problem of not implementing the staffing policy or adherence to existing contract provisions. We have taken action to do so in the directed procurement area and recognize the DOE policy statement announced last August, as well as the order referred to a minute ago in the statement. In the area of property management, we believe our policy is adequate to control personal property within the Department.

In view of the apparent breakdown of property controls at individual sites, we will look for ways to strengthen the implementation of existing controls.

We are also reviewing our policy for hiring consultants. We do not believe we have a general policy or systems breakdown in this area. Our manager of the Chicago operations office is prepared to address the specifics of Argonne.

In summary, our policies and processes, I believe, are sound. We are fully committed to their effective implementation.

I have with me representatives from headquarters and the field who will be glad to address specific processes in more detail or address any specific areas raised in the GAO statement of facts.

We all look forward to working with you toward improving our overall management and operations.

Thank you, Mr. Chairman.

I would like to introduce the members of our staff who are here. On my right is Mr. Donald Bauer, who is Deputy Assistant Secretary for Fossil Energy. To my immediate right is Bob Bauer, who is the manager of the Chicago operations office.

To my left is Hilary Rauch, Director of Procurement; and to the far left is Marshall Ryan, who is Comptroller of the Department.

Chairman ROTH. Thank you, Mr. Mares. It is my understanding that the Department of Energy has pretty much exempted these laboratories from Federal procurement regulations. What is the reason for this exemption and what steps does the Department take to insure this exemption does not lead to weaknesses and abuses?

Mr. MARES. The laboratories, GOCO Laboratories, are a very unique and valuable asset to this Nation. They were started about 40 years ago, and are based on the principle that another institution, be it a university or industrial firm, with its own procedures and skills, operates under contract for the Department of Energy and thus the company

can perform very valuable research work in a most effective way. So, we start with the fact each of these institutions has in place their own existing standards of control as relates to procurement, personnel.

Then we have a contract with them that in some cases prescribes additional controls that we think are needed. In any event, we have had the opportunity to review the system they have to insure it generally meets the Federal law and meets our needs. We do not think it is appropriate, nor would it be effective, to mandate that they adopt verbatim each of the Federal control systems.

Chairman ROTH. Could I ask you a question right there? Do you review and approve their procurement procedures in any way? I understand, and agree, the reason you pick these contractors is to pick people who have the expertise to manage this kind of a facility and you want them to have more flexibility that is possible under the rules and regulations of the Federal Government.

At the same time, what are your procedures to maintain insurance that the contractors' practices are efficient and effective.

Mr. MARES. At the start, they are covered in the contract, either in specific or general case, depending upon the particular subject matter in question. We also have a series of reviews of the implementation by the contractor of that contract to insure the performance meets the standards that have been established.

Those reviews and the laboratory appraisal process have been discussed already in general terms. More specifically, we have a contract procurement review system which reviews the performance in the—

Chairman ROTH. When you say review these contracts, exactly what do you mean by "review"? What are the practices in the Department of Energy for reviewing?

Mr. RAUCH. Using what we call the "Federal norm," which the GAO has on a number of decisions agreed is the appropriate set of standards by which one should measure subcontracting in situations such as this, we form a several-member team periodically and review all of the policies, procedures and, on a sample basis, the carrying out of those procedures at a contractor operation.

We adopted this program in 1977. We generally will review a contractor's procurement program if they have a subcontracting program in excess of \$5 million annually. All of the national laboratories that have been addressed in this investigation have been reviewed. We conduct somewhere on the order of 20 to 25 reviews per year. We are supported in that program even though they are Federal agencies, including the Department of Defense who has a very strong—

Chairman ROTH. You are speaking of review of procedures, of procurement systems?

Mr. RAUCH. Yes, sir.

Chairman ROTH. As part of that procedure, do your representatives review specific contracts over certain amounts or certain times?

Mr. RAUCH. They will perform a very selective sample review. For example, in the national laboratories there is well in excess of 300,000 procurement transactions per year. So you can see with a small team, on site for a limited period of time, that has to be a very small sample which, of course, is what the GAO did for us.

That kind of review tested against what we call the "Federal norm" determines whether or not they have an acceptable system. I think we

will readily say to you here today that, based on some of the findings we have seen in this investigation, as well as previously in our own, we will have to strengthen our surveillance and followup of those systems reviews.

Chairman ROTH. Do you have anyone, do you have contracting representatives and auditors at each major location?

Mr. RAUCH. There is a senior contracting officer at each of our major laboratory locations.

Mr. R. Bauer, on Mr. Mares' right here, is the senior official, for example, at our Chicago operations office, which is responsible for the Argonne National Laboratory contract.

Chairman ROTH. If I might, I would like to ask you, Mr. Bauer, what your functions consist of?

Mr. R. BAUER. I have a number of functions. We administer over 2,500 contracts at the Chicago office.

With respect to Argonne, we do review their subcontracting practices and continually review their procurement activities. We establish thresholds for both cost-type and fixed-price contracts, providing us with a mechanism for sampling the variety and adequacy of their procurement actions.

On a regular basis, we also perform an audit—not an audit, but evaluations or appraisals of the procurement process, for example—and we also look at other functional areas, such as security, et cetera.

Chairman ROTH. Do I understand—I thought you were located right at, say, Argonne.

Mr. R. BAUER. We happen to be physically located on the property. I have a fairly significant number of people there.

Chairman ROTH. How many people do you have there?

Mr. R. BAUER. Over 300, and we have several other locations.

Chairman ROTH. You mentioned reviewing the procedures. Are specific contracts of certain amount required to be submitted for approval?

Mr. R. BAUER. Yes, they are. We look at them on a transactional basis, if they meet or exceed the review thresholds established for various kinds of contracts.

Chairman ROTH. I would like you to submit those, if you would.

Mr. R. BAUER. I can document what we have looked at, yes, sir.

[The material referred to follows:]

CHICAGO OPERATIONS OFFICE OVERVIEW OF ARGONNE PROCUREMENT

SUBCONTRACT REVIEW

DOE's Chicago Operations Office (CH) review of Argonne National Laboratory (ANL) subcontracts involves a comprehensive examination of both the subcontract document and file documentation of those subcontracts above the dollar limits set in the prime contract. This review is designed to ensure that the action is legally sufficient, contains the proper patent provisions, complies with all applicable laws, regulations and statutes, and reflects an award based on a fair and reasonable price to the Government. As a minimum, each document is reviewed by three divisions in the Chicago Operations Office—Acquisitions and Assistance Operations Division (AAOD), Office of Counsel, and Office of Patent Counsel, with final DOE approval by the Director, AAOD I. If necessary, other CH Division (i.e., Financial Management Division, Safeguards and Security Division, Engineering Support Division, Organization and Personnel Division, Technology Management Division) will be involved in the review process. Files containing major deficiencies are returned to ANL disapproved or approved on the condition that necessary corrections are made.

QUARTERLY REVIEWS

Quarterly Procurement Reviews are performed by AAOD in partial fulfillment of our surveillance requirements pursuant to DOE-PR 9-23.110. Typically, 12 ANL purchase orders and subcontracts, not previously reviewed by CH, are randomly selected from a listing of all procurements executed by the Laboratory during the previous quarter. Each action is thoroughly reviewed by one of three contract specialists comprising the review team. The procurements are examined principally to ascertain whether proper source selection procedures were followed, to determine whether proper cost/price analysis was adequately performed, and to ensure that the procurement file contains all of the documentation necessary and required to support the action. Following each review, the findings are discussed with Laboratory management, and alternatives to correct deficiencies are discussed. A formal report is issued summarizing each of these reviews, with concurrence by the Director, AAOD I.

CONTRACTOR PROCUREMENT SYSTEM REVIEWS

Contractor Procurement System Reviews are performed at ANL by DOE-CH approximately every two years, in accordance with the Guide for Performance of DOE CPSRs. A team of 10-12 professionals, representing the procurement, finance, property management, legal and patent counsel, and personnel functions conduct a comprehensive 2-week examination of every major aspect of the Laboratory's procurement system. A formal report containing all team findings and recommendations is transmitted to Laboratory Management which has the responsibility to ensure that all recommendations are implemented. Based on the results of this review, the Laboratory's procurement system may be approved or disapproved, and individual procurement action approval levels may be increased, maintained, or decreased.

Chairman ROTH. What measures or steps do you take at that level to insure there is a maximization of competition in their procurement practices?

Mr. R. BAUER. As was alluded to earlier, subcontracts entered into by any of our prime contractors have to be competitively awarded except in those instances where they can demonstrate that to do so is not in the best interest of the Government or the program. In those instances, contractors are required to document the file with a justification of noncompetitive procurement.

Chairman ROTH. What kind of review of those exceptions does your office make?

Mr. R. BAUER. As part of our ongoing review, we do look at the efficacy of the JNCP's that are in the file. As a result of our review, Argonne has improved its system, although based on what we have heard here today, we have some way to go. We do look at the process, we look at adequacy of JNCP's, and we have pointed out where procedures have to be strengthened.

Chairman ROTH. Have there been any suspensions of reimbursement, any laboratories for which you have such response.

Mr. R. BAUER. I cannot recall a case in which we have denied payment to the laboratory under the prime contract. With subcontracts, of course, there have been—

Chairman ROTH. Subcontracts?

Mr. R. BAUER. Entered into by the laboratories.

Chairman ROTH. What would be the reasons for those disallowances, do you have any recollection?

Mr. R. BAUER. The overriding reasons one would refuse to pay are either misapplication of overhead or unallowables under the terms and conditions of the contract.

Chairman ROTH. How about failure to use competition? Have you ever disallowed because—

Mr. R. BAUER. Not to my knowledge.

Chairman ROTH. Do you ever raise any questions with respect to competition? I will be very candid with you. I am very concerned that in Government generally, not only in the Department of Energy, but the Department of Defense, competition, under the laws enacted by Congress, competition is the preferred method of procurement, for obvious reasons. It is the best assurance that the Government is getting the best possible price.

I also understand it is easier to use sole source and other approaches and other means. Sometimes they are justified. I am not saying they are not. The problem is the exceptions tend to swallow the principle. I am concerned that if the people representing the Government in this sort of contract do not keep the pressure, you are going to find more and more contracts let by other means.

Mr. R. BAUER. I think the record would demonstrate that in our activities at least we have kept up the pressure for competitive actions.

Chairman ROTH. What percentage of the contracts are let by competition at, say, Argonne?

Mr. R. BAUER. I would say a fairly high number. I don't have an accurate statistic. What you saw in the statement of fact dealt only with the personal service areas.

Chairman ROTH. Do you have any figures?

Mr. R. BAUER. I can provide those for the record.

[The information referred to follows:]

Following is the requested information on competitive contracts at Argonne National Laboratory. Please note that the figures represent the first 9 months of fiscal year 1982.

Number of initial actions—procurements over \$10,000-----	436
Number competitive-----	288
Percent of actions competitive-----	66
Dollar value (in millions) of initial actions—over \$10,000-----	\$40.4
Dollar value competitive-----	\$24.6
Percent of dollars competitive-----	61

Mr. RAUCH. Mr. Chairman, I did bring with me, not for Argonne, but the Oak Ridge National Laboratory—

Chairman ROTH. Which laboratory?

Mr. RAUCH. Oak Ridge. For new contracts awarded for that laboratory in fiscal year 1981, over 50 percent of the dollars were awarded competitively. That is not to say that that is adequate, however. I think what I would like to suggest is, as we continue to put pressure on these systems, as Mr. Bauer alluded to, we are striving to see that the trend is in the right direction. I think if you had visited these statistics 5 years ago, the numbers would have been even less adequate. I think what we would say is we have as a goal the same thing that by Federal law and regulation is my responsibility—to get competition in prime contracting. We are doing the same thing at the subcontractor level.

Chairman ROTH. Does DOE have any real way to identify directed procurements?

Mr. R. BAUER. Let me speak for myself on this one.

Prior to the issuance of a DOE-wide injunction, there were some disturbing facts that came to my attention implying that people were

directing the laboratories to use their procurement powers to accomplish their demands inappropriately. I immediately conferred with the laboratory and established an agreement back in May 1980. An announcement went out to all laboratory employees directing them to refer any directed procurements to their own management, and further instructing them that no direct procurement would be permitted without the expressed approval of the contracting officer, who, in this case, happened to be me.

So we have the antenna out, and the net. There are several thousand employees at each of these major laboratories and several laboratories throughout the DOE and every one of them has a telephone. Management attention is devoted to this problem, and related concerns exist on both sides.

Mr. MARES. I would like to reiterate, I think it is clear the management of the Department is not very pleased about the directed procurements. It has for a year, witness the memorandum from the Assistant Secretary of last August, and the order of this January.

It is a matter of concern to us. It is quite clear it is a matter of concern to the committee. It is something I will review with the operations office managers in the next meeting we have with them. They are, as operations managers, explicitly directed—the memorandum that went to the Under Secretary in May, among other things, they have to be assessing all the procurement functions of the national laboratories. So it is something the senior management of the Department is concerned about.

Chairman ROTH. Mr. Mares, as I understand it, one of the reasons given for the proliferation of directed procurements in the late 1970's, as explained in numerous staff interviews, was the excessive redtape and lack of resources at DOE Headquarters Procurement Office. Would you agree with that assertion? In other words, they were trying to cut through the DOE's own redtape.

Mr. MARES. I think we are speaking about a policy which is a policy you and other Members of Congress and senior managers at the Department are concerned about. Directed procurement can lend themselves to less than adequate consideration of the value that is to be received by the Government and must be carefully considered.

Chairman ROTH. The one thing that concerns me, the Comptroller General did testify that since the issuance of this memorandum in January was it?

Mr. MARES. There was a letter in August to all the Departmental officials and then an order in January on this subject.

Chairman ROTH. As I started to say, there have been a number of instances since then.

Mr. MARES. My recollection from reading the statement of facts is that the number of instances was a small percent of the ones they had observed in the previous—

Chairman ROTH. What action did the Department of Energy take with respect to those instances where the individual requested a directed procurement in violation of the memorandum?

Mr. MARES. I believe some of them were at Argonne. Can you speak to those?

Mr. R. BAUER. The DOE order on directed procurements does not impose an absolute bar to directed procurement. What it does do is put a block—

Chairman ROTH. It's like being a little bit pregnant.

Mr. R. BAUER. No; the biggest problem with directed procurements is you have a program manager in Washington telling a laboratory in the field to enter a contract with X, Y, and Z. He may have extremely good reasons for doing this or he may do it under circumstances that are not in the best interests of the Government.

Chairman ROTH. How does the memorandum distinguish between those that are all right and those that are not proper? What are the criteria?

Mr. R. BAUER. When we have evidence someone is directing a procurement, there has to be a fully adequate justification for a noncompetitive procurement. There generally has to be some condition of urgency involved, or some unique capability or programmatic requirement that cannot be satisfied by any other method, and the incidence of this has dropped markedly because of the extra threshold people have to go through. It is not an easy route to follow.

Chairman ROTH. I would ask the memorandum be submitted for the record.¹

Mr. MARES. I will be happy to do so. I will not be so bold as to promise that, even with increased management attention to this, there will never be an instance found of an inappropriate directed procurement. It is clear it is a matter of management attention and will continue to be, but I do not believe there is any control system anywhere that is going to be cost effective, and never be obviated by some individual.

Chairman ROTH. No one is asking that.

Mr. MARES. I understand that.

Chairman ROTH. Or even suggested that. But what we are concerned about is, one, what are the instructions in this area and where they are violated, what action does the Department of Energy take? The oldest scheme in town is to issue an instruction to satisfy the requirement of some committee or some member of the Senate. I am not interested in that. What I am concerned about is that these cases of directed procurement, where you direct, say, Argonne Lab, whoever is running it, they are in a difficult spot to reject it because they are dealing with people who are responsible for their future, it is outside the contract, it raises serious legal questions, and I recognize you have got to have some flexibility. So far I just don't see where there has been any real effort beyond the memorandum to do much about it. I hope you are correct in saying that the numbers have dropped down.

Mr. WEILAND. Mr. Mares, I would assume you and members of your staff have read the statement of the Argonne Lab in its response to the GAO statement of facts.

Mr. MARES. I have read part of it.

Mr. WEILAND. Could we get your general reaction to the Argonne statement and specifically I would point out it appears to us that Argonne is saying had the GAO gone beyond the personal service procurement area, that the same types of problems would not be apparent.

For example, sole source procurement would not be as much in evidence. Retroactive contracting would not be found.

Do you agree with that implication, at least the implication in the Argonne statement?

¹ The material referred to appears on p. 19 as Exhibit No. 1 and on page 25 as Exhibit No. 2.

Mr. MARES. I think the statement speaks for itself. I have not read it in its entirety. Until I have, it would be presumptuous to say it is.

Mr. WEILAND. Let me ask you, Mr. Bauer, do you think the problems discovered by the GAO with respect to procurement of personnel services are unique there at Argonne or whether if the GAO expanded its work in the procurement of other types of services and material, they would find the same kind of problems?

Mr. R. BAUER. I think the statistics generated by personal services contracts could be significantly different from what we find in other areas. When we take a sampling, we could have a better measure of the overall activities. We have put continuous pressure on Argonne to improve its procurement operations and they have made major improvements.

Part of the problem alluded to in the Argonne statement, and particularly germane in the procurement area, is that for years Argonne and other labs had relatively stable operations. In the late seventies there was an expansion of the kind of procurement activities they were being asked to perform. Some of this procurement was not necessarily germane or central to the laboratory's mission and a good part of it was. What it did was put stress on the capabilities in terms of both number and quality of the people who had been addressing the procurement situation, and they had to play catchup. I would say the procurement operation, as witnessed and attested to by reviewing our more recent appraisals at Argonne, is much better than it was several years ago.

Mr. WEILAND. One other question, Mr. Chairman, on this same subject of procuring personal services, Argonne has a statement that it is not improper to direct job applicants to middlemen or intermediary firms for the purpose of hiring them back as consultants or as employees of such a firm. Do you have a comment on that?

Mr. R. BAUER. I think that one could raise serious questions about the propriety of someone saying, "Go to see so-and-so, and he can take care of you because I can't." If that person was trying to subvert some of the controls he feels his own organization was placing on him, then the Argonne position, as a matter of policy, is that they did not recruit through these middle people; and I have to believe that. A gray area would exist if someone comes to you looking for a job, and you say, "We don't have anything but I know someone else who is hiring." That is not an improper referral. It runs the gamut. It depends on the motivation.

Chairman ROTH. Let me mention a couple of illustrations that we are aware of. One situation is where Argonne hired a former administrative employee as a consultant in his Washington, D.C. office.

Under the new arrangement, the former employee was paid almost twice her former salary and the Lab picked up indirect charges of 147 percent of her salary which were paid to the consulting firm. Ultimately the Lab's cost to keep this person in Washington went from \$11,000 to \$48,000 a year. The GAO study indicates propensity on the part of labs to hire former employees as consultants. For example, an Argonne engineer received a \$34,000 bonus as an incentive to retire early. Supposedly this retirement program was to terminate all the less productive employees whose services were not important. The retiree then turned around and was awarded a noncompetitive contract

to do exactly the same work for \$175 a day. Are these cases accurate and can they be justified?

Mr. R. BAUER. I don't think you have full possession of the facts. In the latter case, the case of the engineer, he was offered the option of early retirement. He exercised that option with the understanding that he would not be reemployed in any way, shape, or form with the laboratory for a period up to 1 year. That understanding was adhered to, and that former employee received no moneys from Argonne National Laboratory, even though I understand from time to time, because of his dedication to the project he was engaged in, the Atlas project, he volunteered his services. Subsequent to the 1-year period from which he was barred from any recompense from the laboratory, he was placed under an ANL consulting agreement. He was actually employed 29 days in 1981 and 19 days in 1982, but for each 2-day period he worked, he received pay in the amount of 2½ hours per day. So I think the laboratory honored its commitment. It did not reemploy this person except to meet a need of the project for the services of a very dedicated and knowledgeable chemical engineer who made contributions to the project.

Chairman ROTH. What about the case of the consultant in Washington?

Mr. R. BAUER. In the case of the consultant, I think one should go and look at her previous employment record. Before she joined Argonne, at the rate of \$11,000 per year, she was an instructor at a junior college, and ran her own business.

As nearly as we can tell without going to her Federal income tax return, her annual income was somewhere in the neighborhood of \$30,000 per year. Why she took a job with Argonne, which underemployed her skills for a salary of \$11,000, I haven't been able to determine. She was in a fairly low-level clerical job. She was not happy with it, and when an opportunity arose for her to work for this firm, something that was more closely meshed with her capabilities, she took it, demonstrated her capabilities, and later was hired by the laboratory.

So that is an open question.

Mr. WEILAND. Mr. Bauer, we are going to take a short break while the chairman takes a phone call.

[Brief recess.]

Chairman ROTH. The subcommittee will be in order. I would like to turn to education for a moment. I am a firm believer in higher education. I see from the GAO report, so are the employees of your lab. In fiscal 1981, 350 Argonne employees were reimbursed for courses they took. My question is, what do you need lawyers for? Did you know the Federal Government paid almost \$30,000 to Argonne employees for law school courses and do you think that is a proper policy?

I would direct that last question to you, Mr. Mares.

Mr. MARES. I think you are dealing with a contractor who has an overall set of personnel policies designed to attract and maintain the highest caliber of people they can in order to deliver a good, outstanding technical project to the United States. I think the educational policies of a contractor or of any employer are part of attracting and maintaining—and I think the specifics of this need to be looked at in the context of the desire on the part of that contractor, as well as our-

selves, that we have truly outstanding people at the Argonne Laboratory. More specifically, Bob probably has a comment.

Chairman ROTH. Because I am interested in the policy, let me ask you, would any graduate course be appropriate then under this policy?

Mr. MARES. I have not reviewed the specific policy of Argonne. What I am saying is, the educational policies of an employer are a factor in attracting and retaining people.

Chairman ROTH. How many private contractors maintain that kind of a policy?

Mr. MARES. The company I worked for had a policy that they would pay half of the cost of any higher education course that one took.

Chairman ROTH. But that was half.

Mr. MARES. Yes; but that was part of the overall package. There are other firms that paid all the costs.

Chairman ROTH. Is this kind of a program submitted for approval to the Government?

Mr. R. BAUER. Yes; the overall procedures and policy of providing educational support to employees is a matter for DOE approval under the Argonne contract.

Chairman ROTH. Any kind of graduate work?

Mr. R. BAUER. We don't specifically approve specific actions. In other words, a supervisor employed by the laboratory follows the laboratory's procedure for educational support, what we approve is the general thrust, content, terms, and conditions of the program.

I might add, too, that one of the significant reasons for Argonne's program for education of employees has been our pressure for upward mobility and affirmative action programs.

Chairman ROTH. You are correct, a lot of companies do have programs to at least partially pay advanced education. Normally it has some relevance to the job at hand. I guess the question I have in these days when the dollars are relatively few whether or not this kind of a benefit, admittedly it would be nice if we could do that for everyone, is appropriate.

I believe you had some questions?

Ms. HILL. A few questions, Mr. Chairman.

We heard some testimony this morning, and I believe in the staff statement there is reference, in addition to the consultant problem of hiring people, individuals, professionals who went to the lab asking for jobs, were turned down and told to go to an intermediate and then were hired through intermediaries at substantially higher salaries. What causes that sort of thing, what is being done to correct it, and how common is that problem?

Mr. MARES. I think the comments were directed toward a specific laboratory. It is not a practice we are happy about or want to encourage.

I think there is reference to that in the Argonne statement. Bob, do you want to comment more about that?

Mr. R. BAUER. The conditions that generated the extensive use of personal service contracting were referred at a time when the laboratory was being asked to expand its activities in a number of areas that had not been generically part of the laboratory's mission in the past. There were a number of uncertainties surrounding the length.

duration of this activity, and the laboratory had some question about the future of their involvement in this activity.

On the other hand, they felt a strong need to be responsive to the sponsor (DOE) and to get a job done, and they did.

In the process of doing that, some actions were taken that, in retrospect, one cannot condone or sanction.

Ms. HILL. So I believe what you are saying is, at the time they hired the individuals, they weren't sure those were going to be permanent positions?

Mr. R. BAUER. That is right.

Most of these people, while there was a fairly significant number, something like over 25, who were in employment status as temporaries, there was something like 35 people that went through two or three contracts that were being investigated.

Most of those people did not work for long periods of time as residents or otherwise.

Ms. HILL. Some of them were eventually hired directly by the lab.

Mr. R. BAUER. About 10.

Ms. HILL. So I guess that would suggest there should be somewhat better planning as to future need or whether a position is temporary or permanent in the future.

Mr. MARES. I am sorry, I disagree with that. I think to run an operation given the budget situations we had over the years, the managers of those labs need the flexibility to hire temporary people from time to time. The number of temporary people in this case, albeit in the record there are allegations of why they might have been hired, I do not support; but the basic proposition of hiring temporary people is a very desirable proposition and the number is not very many.

Ms. HILL. That is true, it gives you more flexibility, but wouldn't you agree some care should be taken as to the cost differentials? It seems like at least in one instance there is double salary—in the staff statement—there is a high cost differential between a temporary and permanent person.

Mr. MARES. Those don't consider the cost of bringing on a permanent person.

You are comparing apples and oranges. It is recognized it is going to be a bit more expensive bringing on permanent people. That is something that is known both in Government and private sector.

Ms. HILL. Is there any kind of review or monitoring of who is hired as temporary and the price differentials in that sort of situation?

Mr. R. BAUER. Yes, under the terms of contracts entered into to provide personal services, each cost for services rendered is measured against the going market rates.

There has been no question whether these rates were outside or beyond the pay of what one would expect in this kind of marketplace. I will also add, and I think it is in the Argonne statement, that in recognition of some of the problems associated with this, they have created a new class of employee, a sort of temporary hire. Now whether you can get the skills that you need to meet the needs of the program while giving someone an indefinite appointment is also a question. In some cases you find that there are collections of skills offered in the marketplace by firms which meet specific short-term needs of any organization where the people who are providing that skill know their

long-term future rests with that corporation and not hiring out on short-term jobs around the country under terms and conditions that are determined by the hiring agency.

Ms. HILL. I have no further questions, Mr. Chairman.

Chairman ROTH. Gentlemen, those are all the questions I have but let me make a few observations. I, frankly, am rather concerned by the attitude. It seems to me there is a little bit of a hands-off attitude, when it comes to maintaining careful procedures to insure the Federal dollar is spent. The Department of Energy has been criticized very seriously by this administration in the past as to some of its practices.

What worries me the most is that in a cost type reimbursement contract, unless you have adequate safeguards, there is no assurance that the money is being well spent. Now, I have to say on a positive side, I think these laboratories are excellent and many of them are doing fine services. I agree with the proposition that there must be greater flexibility in that kind of an operation in the Government. That is the reason why you go toward a GOCO-type operation.

However, I think to insure that there are adequate safeguards, there must be periodic review not only of procedure but specifics. I must say, after this hearing this morning, I sort of get a defensive reaction to everything that is brought up despite the fact that Argonne itself has said that they are going to adopt several of the changes recommended by the General Accounting Office. I think that is encouraging, but, frankly, I will be candid with you, talk about directed procurement, I am left in the dark as to where you are. Some are all right, but others are not.

I would hope that the administration—this whole question of the Department of Energy is going to be coming before the full committee anyway and one of the criticisms is that the Department of Energy has not been cost efficient. You people go back and take a more careful look at some of your practices and procedures and see what can be done to safeguard the Federal dollar.

We have less money. The Department of Energy is going to have to get along with less as well as others. I think some of the practices of the past may have been excusable because there was no shortage of funds. But perhaps the situation is otherwise today.

Gentlemen, I thank you for appearing here today. We will leave the record open for 7 days in case other members have questions. Thank you very much.

[Whereupon, at 12:13 p.m., the subcommittee adjourned.]

APPENDIX

ARGONNE NATIONAL LABORATORY

9700 SOUTH CASS AVENUE, ARGONNE, ILLINOIS 60439

Telephone 312/972- 8496

July 26, 1982

Senator William V. Roth
Chairman
Senate Permanent Subcommittee on Investigations
Washington, D.C.

Dear Senator Roth:

Attached is the Laboratory statement in response to your invitation of July 16, 1982, to provide information at the hearing which your Permanent Subcommittee on Investigations is holding on July 27, 1982.

We have cooperated fully with both the Subcommittee staff and the GAO in this effort and are pleased to work with you to obtain greater benefit from the resources allocated to us. A number of corrective actions have been implemented as a result of the suggestions that we received. Where there are areas of misinterpretation in the GAO findings, we have identified them in our submission.

We agree wholeheartedly on the need for constant vigilance on expenditures of public funds and appreciate the valuable work of your Subcommittee, its staff and the General Accounting Office.

Thank you again for this opportunity to contribute information. We look forward to receiving recommendations regarding the GAO findings and the recommendations from your staff.

Sincerely,

Walter E. Massey
Walter E. Massey
Director

WEM:en

cc: Hanna Gray, President, University of Chicago
Robert H. Bauer, Manager Chicago Operations Office, DOE

Att.

ARGONNE NATIONAL LABORATORY

RESPONSE TO

GAO DRAFT AUDIT REPORT DATED JULY 23, 1982

"GOVERNMENT-OWNED, CONTRACTOR-OPERATED RESEARCH FACILITIES"

EXECUTIVE SUMMARY

INTRODUCTION

The General Accounting Office (GAO) conducted an audit of internal controls at six of the National Laboratories and several Energy Technology Centers under Department of Energy (DOE) control. Argonne National Laboratory (ANL) was one of the DOE Laboratories selected for audit.

Argonne National Laboratory wants to express appreciation to the Senate Governmental Affairs subcommittee and to the General Accounting Office for their efforts to identify areas of the Laboratory's internal controls which need to be strengthened. Cost effectiveness is a primary Argonne goal and responsibility in fulfilling its mission of providing scientific knowledge to meet national needs.

The GAO findings are broadly grouped within three administrative areas. These are: 1) Procurement, 2) Property Control, and 3) Payroll/Personnel. Actions are already contemplated or underway to implement many GAO recommendations:

Procurement

- Established enhanced controls over sole-source procurement, including periodic competing of Personal Services Contracts written under the Basic Ordering Agreements, and additional technical support of the ANL Sole-Source Selection Board.
- Expanded Personal Services Contractor procedures which include the appointment of an ANL Technical Representative with full authority to certify vendor invoice and assess subcontractor progress.

Property Control

- Plans to establish an equipment information network providing ANL operating units with an inventory of surplus equipment so that infrequently used equipment may be made more productive and overall costs reduced.

Payroll/Personnel

- Developed practices which will substantially reduce overdue foreign travel trip reports and also, require reporting of all reimbursement monies received by employees for foreign travel reimbursement.
- Enhanced controls over staff payroll to include absence reporting, and Division Office confirmation of accrued vacation.

These initiatives will enhance previously existing systems of financial and administrative controls for the three major areas studied. Instances where the GAO findings are subject to misinterpretation are pointed out, where appropriate, in the subsequent section of this response summary for each area of the study:

PROFESSIONAL SERVICES PRACTICES AND PROCUREMENT POLICIES

Much of the GAO draft report deals with what is perceived as excessive use of contract personnel by ANL. While there may be occasional instances of questionable judgment by some Laboratory personnel, the overall practice can be justified as cost effective.

The period covered by the audit was one in which significant changes occurred within the national laboratory structure. The Department of Energy had recently been formed. The national laboratories were transferred to the new energy agency. At the same time the laboratories which were predominantly focused on nuclear energy research were given much broader responsibilities in all areas of energy research and development. National priorities were also in a state of change with less emphasis on nuclear energy and much greater emphasis on conservation and renewable energy sources. As a result, long established programs at the various national laboratories were being terminated and new program areas were being established.

This resulted in a distortion of the technical talent pool available at the laboratories. While some technical people were easily adaptable from one technology to another, others were not. The Laboratories were faced with a period in which the kind of specialized knowledge and skills of the technical staff required change. As properly pointed out in GAO draft audit report, to adapt swiftly to the changing national needs the laboratories increased use of temporary technical personnel. Under the circumstances, this method enabled Argonne and the other national laboratories to make quick adjustments to program changes consistent with the funding and time constraints imposed upon the Laboratory. It further gave the Laboratory time to adjust its permanent personnel pool in a reasoned manner.

At Argonne National Laboratory, for example, the use of technical consultants and personal service contracts hit a high in 1980, when the new program requirements were being most acutely felt, with about 200 contractor personnel at a cost of \$6.0 million. In 1982 this has been reduced to fewer than 15 contractor personnel at a cost of \$0.6 million, a tenfold reduction.

The procurement portion of the GAO audit was limited in scope to a review of personal services procurement practices. During the five-year period covered by the audit, the aggregate value of professional service contracts was \$16.4 million, compared with the \$625 million total value of ANL obligations. The GAO review, then, covered about 2.6% of ANL obligations. While \$16.4 million is a significant expenditure, it is important to note that the GAO findings address a significantly smaller sample than the uninformed reader may recognize by reading the report.

In summary, congressional funding through continuing resolutions and the rapid mobilization and dismantling of programs provided ANL a high level of uncertainty in making human resource decisions.

OTHER COMMENTS

Some of the report addresses judgmental areas. The review cites very few findings which either identify ineffective procedures or methods of internal control which would resolve the findings. While action has been taken on several of the GAO findings, some findings are not indicative of current conditions, or may not be cost effective to implement.

The Laboratory exercises extensive internal controls and cost-effective administrative practices. To demonstrate that these controls and basic administrative practices are in effect, this section addresses the significant GAO findings which we believe are misleading or not cost effective.

PROCUREMENT

- * The Laboratory complies with directives established by the Department of Energy (DOE) with respect to DOE-directed procurements. Once a contract is let by ANL, it becomes subject to the Laboratory procurement procedures that apply, whether or not they are directed by DOE. The Laboratory has consistently met its responsibilities under law and contract.

Before the period of this audit, the Laboratory became aware of the need for tight control over "directed" procurements. ANL recognized that in some instances there was a legitimate need for procurements of this type but that strict vigilance would be required to insure that Federal funds were protected and competition for Federal funds was at the greatest extent practical. As a result of the internal analysis, the Laboratory reached an agreement with the DOE Contracting Officer to insure that no directed procurements would be placed without the expressed written direction of the DOE Contracting Officer. This policy change greatly reduced the number of directed procurements and strengthened the justifications for the remaining procurements of this type.

- * Many of our personal services contracts are sole source because of the particular kinds of services required. We have implemented procurement procedures, which require careful justification of vendor selection and provides a basic control mechanism to reduce or eliminate potential abuse. The draft report did not state or imply that our procedures were inadequate, but the report is critical of sole-source practices generally regardless of supplemental ANL practices in effect.

- The Laboratory does not circumvent personnel standards or employment ceilings which it establishes. The GAO's findings are based upon their review of the activity of three consulting firms which provided 135 personnel under contract during the five-year audit. During this period, the Laboratory hired ten of the consultants; a condition which clearly does not circumvent ceilings during a period when ANL had approximately 5,000 employees.
- Retroactive contracting is the exception rather than the rule at ANL. It occurs primarily in the personal services area and is addressed by a contract Procurement Procedure. The GAO did not criticize this procedure which provides a disciplined approach to personal services procurement when management believes it must mobilize programs quickly.
- The vast majority of ANL contractual obligations include progress monitoring, periodic visits, confirmation of deliverables and inspection. The GAO draft report which focused only on personal services, a small percentage of the total, found less active monitoring in that area. However, even in this area, effective monitoring procedures are employed, including consultant assessment and program deliverables reporting.
- ANL does not routinely let contracts to its former employees. One instance of a firm providing personal service where an officer was a former ANL employee was identified. The officer had left ANL's employ five years earlier. No evidence has been found indicating conflict of interest. An employee who accepted early retirement returned to work part-time after one year when his special expertise was needed for a period of 25 days.

PROPERTY CONTROL

- The Laboratory complies with Department of Energy directives. Argonne has conducted capital asset inventories as required. These inventories have been reviewed by ANL Internal Audit and are a matter of record.

Equipment contains inventory tags to facilitate identification as required.
- The development of a physical pooling system for periodically used equipment is not cost effective because it would require additional personnel and facilities to support it. The ANL concept of a Division Property Representative (DPR) is a cost-effective means of controlling sensitive items. This method, coupled with the sharing of seldom-used equipment, is the most cost-efficient method available.
- ANL has developed a balanced program to safeguard entrusted assets against theft. This includes site security, the DPR accountability system, periodic inventories and attachment of property to fixed building components.

PAYROLL/PERSONNEL

The draft report presented several findings pertaining to Payroll/Personnel activities. The Laboratory has previously addressed many of these findings and has taken actions which have strengthened existing Argonne procedures. The Laboratory appreciates the GAO's findings and is taking steps to implement the majority of them within the Payroll/Personnel areas.

- Procedures for tuition reimbursement are clearly stated within the Personnel Policy and Procedures Manual. Argonne believes that this program supports career development, meets competitive demands, and supports ANL's policy to promote from within whenever possible.

CLOSING COMMENTS

We wish to express our appreciation for the opportunity to provide this statement and to respond to the GAO findings. ANL management has always endeavored to establish practices which make best use of federal funds invested in energy research and to safeguard ANL resources from waste, fraud or abuse. Additional measures will be taken in response to the GAO findings.

STAFF STATEMENT

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. Chairman and Members of the Subcommittee:

In May of 1981, the Permanent Subcommittee on Investigations (PSI), together with the General Accounting Office (GAO), undertook a review of the vulnerability of Department of Energy research and development facilities to fraud, waste, and abuse. Initial work which the GAO had underway at that time was limited; it was quickly expanded however, at Chairman Roth's request, to include a more representative number of government-owned, contractor-operated facilities.

As a result of this expanded study, the GAO reported to us numerous internal control weaknesses, particularly in the areas of procurement administration and property management. Chairman Roth then requested Comptroller General Bowsher to conduct follow up audits at the Argonne, Fermi, and Brookhaven National Laboratories, as well as several government run Energy Technology Centers, in an attempt to further develop findings in the aforementioned areas. Copies of these request letters are appended to this statement.

Additionally, Subcommittee staff made several trips to both the Argonne and Brookhaven laboratories. Working with GAO auditors and conducting independent inquiries, we interviewed over 50 individuals at the two labs and also followed up leads and gathered documentary materials at DOE headquarters in Washington, D.C. and Germantown, Maryland. We chose to examine activities at the Argonne and Brookhaven labs because of particular weaknesses found at each by GAO and because a significant portion of the DOE research budget (approximately \$400 million annually is spent at these locations.

Directed Procurements

In the area of procurement policy, we attempted to acquire an understanding of "directed procurements" by analyzing specific cases, usually involving personal service contracts. We have learned that directed procurements is a term which is

susceptible of several definitions. Our use of this term denotes those situations where a DOE headquarters official instructs lab personnel to award a contract to a particular firm or individual. In some instances the contract directly or indirectly relates to research which is ongoing at the lab. In other instances the contract is directed for services to be provided directly to DOE headquarters for work unrelated to any lab research. While both situations may, and have, led to abusive procurement practices, the latter contracts are also a misuse of lab procurement mechanisms and should therefore not occur. While DOE has issued several orders during the past year which ostensibly prohibit these sorts of "pass-through" contracts, interviews conducted by Subcommittee staff indicated that a large gray area exists in determining exactly what services and contracts are covered by these orders.

We reviewed one procurement action at Brookhaven which was let on orders from a DOE headquarters office. It concerned the production of an informational film. The film seemed to have had no relationship to research already being conducted at Brookhaven and the Brookhaven officials who awarded the contract had no expertise in filmmaking. In selecting the subcontractor to initially provide advise on film production, they conducted no screening of a pool of qualified people. Indeed, it appeared that the subcontractor's only unique qualifications were that he was in the film business and had attended graduate school with a lab employee whose office was involved in the project. And later, since he had defined the scope of the project for DOE and there was an alleged "urgent" need for the film, he was automatically awarded the production subcontract. After almost six months of work, it was determined that not only was the subcontractor incapable of performance, but the lab discovered that a Presidential moratorium on film productions was in effect which precluded their modifying the contract so the job could be satisfactorily completed. As a result, the project was scrapped, at a cost of over \$15,000.00.

In another case we spoke to a lab contract official who claimed to have been "forced" by headquarters to award contracts that had nothing to do with the laboratory. She said she felt "used" and especially objected to the fact that while on paper she was responsible for the contracts' oversight, she never saw any of the work allegedly performed and, in fact, doesn't even know what the various subcontractors look like. Yet she must pay all the bills submitted by them, which she does "on faith". She was surprised that in some cases all usual requirements for

letting subcontracts, such as obtaining from the subcontractors a statement of work, scope of work, objects of the job, time estimated to complete the task, etc., had been waived by DOE and fees of as high as \$350.00 per person per day were to be paid. This sort of daily rate would not be possible if the procurement was done directly through DOE headquarters. When the lab official questioned this waiver, the headquarters office who directed the job told her that the subcontractor had previously done work for DOE at that rate and was therefore entitled to it. She was nevertheless concerned that no effort had been made to determine if, in the instant case, the level of work to be performed required the same level of payment as before, since this was an entirely different type project. She also questioned the awards being mostly on a sole source basis. She said she was rarely given what she considered adequate justification for these awards and felt that such practices create opportunities for collusion and kickbacks in contract awards.

Other similar examples were reviewed by GAO and/or PSI. When PSI staff interviewed "directing" officials at DOE headquarters, we were consistently told that the headquarters procurement system took much too long and involved excessive red tape. The labs, on the other hand, are not required to follow all aspects of DOE or federal procurement regulations. Expediency would be a particular priority when work mandated by Congress, with short deadlines, had to be performed. Therefore, to ostensibly save time labs have been used to process the procurements and if justification is necessary, the projects would be squeezed into slots in the lab's institutional plans even if they did not always fit. Unfortunately, circumvention of normal procurement regulations often accompanies this saving in time.

The "Body Shop" Phenomenon

Subcommittee staff also conducted numerous interviews to supplement GAO's work at Argonne concerning the use of intermediary firms to hire non-temporary resident consultants. We learned quickly that the common term used to describe these firms was "body shops," chosen since the firms often do little more than provide "bodies" who have already been selected by lab personnel and perform their work at the lab site under direct lab supervision.

Following GAO's discovery of the extensive use of body shops in particular Argonne Divisions, primarily beginning in 1978, interviews were conducted with a number of "body shoppers," and some of their experiences raised serious questions

about lab procurement practices. One individual told us she had applied for a job with Argonne and was told that she would be hired but since the lab was operating under a personnel ceiling her employment would be through an intermediary firm. She accepted this offer and was paid \$10.34 per hour. The firm billed Argonne \$25.34 per hour for her services. After working under this arrangement for one year the employee "left the firm" and took a direct job with the lab, doing the exact same work, and at a salary slightly less than the \$10.34 per hour she had been receiving.

Several other body shoppers told us they had worked at the lab while going to school but upon graduation were told they could not be hired full-time due to the lab's stringent graduate degree requirements. Instead, they were sent to an intermediary firm and hired in this fashion, performing all their work at the lab under lab supervision as if they were a direct hire. In addition to their salaries the lab paid the intermediary firms an overhead of 50-70%. For at least two of these individuals this arrangement has continued for over 3 years.

Another former body shopper also told us that he had been turned down for a lab job due to his lack of a graduate degree. He subsequently answered a classified ad for an intermediary firm, was hired and was placed at the lab doing basically the same work he had originally applied for. This continued for 4½ years, with Argonne paying an overhead of well over 100%. Earlier this year this individual left the firm and was hired directly by the lab.

These examples are only part of the sample but are representative, and clearly they raised a question of whether funds were being wasted in unnecessarily paying overhead charges. Discussions with lab management personnel and the presidents of two intermediary firms resulted in a wide diversion of opinions concerning this practice, which has made a simple analysis virtually impossible.

Procurement officials at Argonne generally disagreed with the use of body shops, stating they are appropriate when short-term, temporary employees are needed, but inappropriate for long-term employment. These officials related to us instances of firms "stealing" lab employees as well as other abuses.

Former lab employees in charge of specific divisions which used body shoppers extensively told PSI that they were hamstrung by graduate degree requirements but they needed junior staffers to work on experiments.

Lab officials emphasized policy considerations concerning hiring freezes and personnel ceilings at a time when funding for new projects was made available, funding which would go elsewhere if Argonne could not accept the projects. These officials also emphasized that the one year budget cycle used within DOE creates enormous problems when long term research is being planned, and body shops were a way to create a work force which could be released easily if funding was terminated or decreased. A complex cost comparison was also presented to us by lab officials in an attempt to show that using body shops were not wasteful economically.

Although the policy considerations raised by Argonne certainly have merit, we wonder whether less costly and more competitive alternatives were available, whether exceptions to hiring freezes and degree requirements could have been made, and whether individual projects offered to the lab should not have been accepted in some cases.

The use of body shops at Argonne has now been considerably decreased, mainly due to a general decrease in available R&D funding. Although neither GAO nor PSI investigated the use of body shops at other labs, Argonne procurement officials indicated that they are used at other sites.

Missing Property

Staff interviews on property accountability indicated an inadequate emphasis by DOE managers on property control and site security, particularly at the university-associated labs such as Fermi and Brookhaven. One DOE employee involved in security whom we interviewed complained that at Fermilab, thefts and untraceable losses of equipment has become a serious problem because of almost non-existent security measures. At Brookhaven, DOE's own security reviews indicate that pilferage is widespread and has become an almost accepted practice. One security representative reported that some Brookhaven project managers routinely order double or triple the amount of supplies and tools needed to ensure that at least one of the items is on hand when needed. And while the amount of reported thefts is small at Brookhaven, about \$25,000 per year, security personnel estimate actual losses to be five to ten times as much, or more. One indication of the lack of control over inventory is that, in a recent property check, some \$30 million of items could not be located out of a universe of \$160 million. A recount over a six month period still left over \$4 million in property missing.

According to several individuals involved in lab security, one factor contributing to the lack of attention to security and inventory protection is the prevailing "university atmosphere" and the tendency of researchers and scientists to be pre-occupied with scientific goals. We found a great deal of reluctance to commit the kinds of resources needed to improve property control and physical plant security because, by doing so, the campus-like environment might be lost and scientists would be offended at having to open their briefcases for inspection, or account for government property entrusted to their care. Further, increases in security budgets would mean less money for research.

Direct DOE Contracting

Subcommittee staff also reviewed a series of consulting contracts awarded by DOE's Chicago Operations Office to a California firm. Under these contracts, which began in 1977, the firm devised a management system to monitor a variety of projects overseen by the Operations Office, and subsequently implemented the system. Our review focused on whether these functions were inherent management functions that should not have been subcontracted, and whether overbilling had occurred. We anticipate additional work in this area so it would be premature to present any conclusion, but it appears that DOE may be contracting out its crucial management/oversight function over some costly projects.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN
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B. CASS WELAND
 CHIEF COUNSEL
 MICHAEL C. BURKHARDT
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 CHIEF COUNSEL TO THE MINORITY

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
 WASHINGTON, D.C. 20510
 May 11, 1981

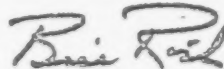
Mr. Milton J. Socolar
 Acting Comptroller General
 441 G. Street, N. W.
 Washington, D. C. 20548

Dear Mr. Socolar:

As Chairman of the Senate Permanent Subcommittee on Investigations, I am very concerned about fraud, waste, and abuse in federal government programs and would like to commend the General Accounting Office for its efforts to evaluate and combat these problems. I am particularly concerned about reports of widespread waste at Department of Energy research laboratories and have been informed that the GAO Fraud Prevention Group in the early stages of assessing the vulnerability of Department of Energy government-owned/contractor-operated research facilities to fraud, waste, and abuse. I understand that work is currently underway at one of these facilities — the Sandia laboratory in Albuquerque, New Mexico. I would like the GAO to broaden this study to include a more representative number of both government-operated and contractor-operated research facilities. At the same time I am hopeful that Subcommittee staff resources can also be focused upon this area.

I would ask that the Subcommittee staff be kept informed of GAO's progress and findings and that GAO's work be completed by October 15, 1981. If there are any questions concerning this request, please contact Howard L. Shapiro, Subcommittee Staff Counsel at 224-3721.

Sincerely,



William V. Roth, Jr.
 Chairman

WVR, JR:hsm

WILLIAM V. ROTH, JR., DEL., CHAIRMAN
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S. GARY WELAND
 CHIEF COUNSEL
 MICHAEL C. GREENHART
 DEPUTY CHIEF COUNSEL
 MARTY STEINBERG
 CHIEF COUNSEL TO THE MINORITY

United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
 WASHINGTON, D.C. 20510

December 18, 1981

Mr. Charles Bowsher
 Comptroller General
 General Accounting Office
 441 G Street, N.W.
 Washington, D.C. 20548

Dear Mr. Bowsher:

On May 11, 1981, I requested that the GAO review the vulnerability of a number of Department of Energy research facilities to fraud, waste, and abuse, with this review covering both contractor operated and government operated facilities. I have been informed that this review has been completed and that your staff briefed the staff of the Permanent Subcommittee on Investigations on December 11. I have also been advised that your staff has done a thoroughly professional job and has uncovered numerous internal control weaknesses, primarily in the areas of payroll, procurement, and property management, which could lead to fraud, waste and abuse.

I am requesting that GAO conduct follow-up work at the Argonne (Illinois), Fermi (Illinois), and Brookhaven (New York) contractor operated laboratories in an attempt to further develop findings in the aforementioned areas. In particular I would request follow-up to:

- Determine whether certain costs charged to prime contracts, such as foreign travel and the use of consultants, are reasonable;
- Examine the potential or actual abuse of overtime as well as possible payroll abuse due to lack of controls over time and attendance for professional staff;
- Determine whether a lack of sufficient accountability over certain items of property susceptible to being stolen for personal use exists;
- Determine whether persons have been approving payments for services without adequate information that work was performed.

I would also like GAO to do follow-up work at the Pittsburgh, Morgantown, and Bartlesville Energy Technology Centers in the areas of property and inventory accountability, and procurement control abuses.

I would like the Subcommittee staff to be kept informed of GAO's progress and GAO's work to be completed by March 31, 1982, with a report to be directed to the Subcommittee. If there are any questions please contact Howard L. Shapiro, Subcommittee Staff Counsel, at 224-3721.

Sincerely,

Bill Roth
 William V. Roth, Jr.
 Chairman

WVR,JR:hsc

PREPARED STATEMENT OF HON. JAMES R. RICHARDS

Introduction

Mr. Chairman, Mr. Vice Chairman, Members of the Subcommittee, it is a pleasure to meet with you today to discuss the activities of the Office of Inspector General in reviewing the operation of the Department's laboratories and energy technology centers.

The Department's laboratories and energy technology centers are a critical resource in carrying out our national energy research and development programs. The activities conducted at these facilities range from fundamental research in the physical and life sciences to the most advanced developments in solar, fossil and nuclear energy. In addition, several of the laboratories have key roles in the Department's defense programs. The efficient and economic operation of these laboratories and energy technology centers is of great importance to the country.

Inspector General Vulnerability Assessment

In hearings before the Senate Governmental Affairs Committee, I stated that my first priority as Inspector General would be to do a vulnerability assessment of the Department. I refer, of course, to the vulnerability of the Department's programs and operations to waste, fraud and mismanagement. In November 1981 I established a task force to conduct two pilot assessments, develop a sound methodology, and make recommendations to the Department.

In December we joined forces with the Assistant Secretary for Management and Administration on this effort. Since the Office of Management and Budget issued Circular A-123, which called for a vulnerability assessment of all agencies of government, the joint task force has been instrumental in developing a vulnerability assessment program that is now underway in the Department. By December of this year all of the activities of the Department of Energy are to have been subjected to the assessment. This will identify programs and administrative functions that are highly vulnerable to waste, fraud and mismanagement. The results of the assessment will help us focus our attention and deploy our resources where they are most needed.

Vulnerability of Research and Development Facilities

It was, of course, not necessary to await vulnerability assessments to determine that substantial attention needed to be given to the research and development facilities. I would like to tell you about some of the reviews we have conducted at these sites, but first a point should be made clear. Most of the laboratories and energy technology centers have been in existence for decades. They have been the subject of management reviews and audits by the field offices of the Department of Energy and its predecessor agencies. Hundreds of reviews have been made and reported upon.

These reviews have concentrated primarily on functional activities such as travel, salaries, procurement, and property management. These are the same activities that are being discussed here today. Perhaps the continuation of these problems in the laboratories and energy technology centers may be explained in part by the fact that the auditing was being performed by organizations which, because they reported to field managers, lacked the objectivity and independence of the Office of Inspector General.

It is well known that we argued for the transfer of audit responsibility from the field offices into the Office of Inspector General. We have had some success in that regard. In January of this year, 46 audit positions were transferred from the DOE field offices to the Office of Inspector General, bringing our total staffing to 159 full-time equivalent positions and an operating budget of \$8.1 million. At the same time, audit cognizance over the research and development activities was transferred from the field into our office. The addition of 46 positions has allowed us to double our audit staff and quadruple the number of auditors assigned to the field. We are now in a better position to conduct multilocation audits of functional activities at DOE's research and development facilities. Nevertheless, our resources remain among the most modest of all major Cabinet Departments.

We are assisted in our audit responsibilities by the Defense Contract Audit Agency, or DCAA, which provides about 120 staff years in conducting mainly pre-award, and cost incurred contract audits. The field offices also have staff who conduct management reviews for the respective managers and who have oversight responsibility for the internal audit staffs of the Department's operating contractors.

The Office of Inspector General also has an Office of Inspections responsible for reviewing the Department's scientific and technical programs and operations. Many of these inspections have involved activities at the Department's laboratories and energy technology centers. Over the last three years, for example, the Inspections staff has conducted reviews of selected programs at over a dozen national laboratories and energy technology centers.

Past Reviews

I would now like to briefly recount some examples of the results of the reviews we have conducted in the recent past, some ongoing reviews, and the results of our investigative efforts at the energy technology centers and laboratories.

- o A comprehensive review of the management of the Solar Energy Research Institute, or SERI, disclosed a number of serious problems relating to SERI's technical and financial management, and procurement practices. On April 24, 1979, we reported that SERI did not have an effective system for evaluating proposals to renew existing contracts. We also reported that improvements were needed in SERI's multi-year planning process. During a followup review, it was clear to us that SERI had made extensive changes in organization, personnel and procedures to correct the previously identified problems.

- o On December 28, 1979, a reported on the management of Government-owned property held by the Department's offsite contractors. We concluded that inadequate control conditions existed over Government-owned property held by the offsite contractors. Recordkeeping procedures were found to be inadequate, responsibility for property management was divided, management guidance issued to contractors could have been improved, and physical controls and property custody were found to be weak. Our recommendations were accepted by the Department and final implementation of a Department-wide Property Accounting System, which will apply to the laboratories and energy technology centers, is scheduled to be completed in October 1982.
- o We reported on August 13, 1980 of significant problems in technical and financial management at the Laramie Energy Technology Center. We found, for example, deficiencies in the dissemination of the technical information being developed under the Department's largest oil shale project. In addition, Laramie did not know how much money had been paid to the contractor on this project. We found that the contractor had actually been paid more money than had been obligated in the contract. Our followup review showed that the Department had taken significant steps to correct the problems.
- o Our March 25, 1981 report on the Blind Shaft Borer Project involved the Pittsburgh Energy Technology Center and the Carbondale Mining Technology Center. We concluded that there was inadequate justification to continue the Department's involvement in the project. Shortly afterward, the Department decided to terminate the project. We believe that our review contributed to this decision, which saved the Department at least \$7 million dollars.

- o In another report on the Solar Energy Research Institute, issued on July 10, 1981, we reported that DOE Headquarters personnel had requested SERI to award two noncompetitive contracts for support services to be provided to the Headquarters personnel. We found that the justifications that were prepared by the Headquarters personnel did not meet the DOE Procurement Regulations and were based on misleading and unfounded statements. By requesting SERI to award noncompetitive contracts to specific firms, DOE personnel circumvented the DOE Procurement Regulations. After we recommended that the propriety of noncompetitive procurement for the two proposed contracts be evaluated, the Assistant Secretary for Conservation and Renewable Energy decided not to proceed with the two procurements. In addition, the Assistant Secretary for Management and Administration issued directions that prohibit Headquarters organizations from requesting a contractor to award contracts that provide support services to Headquarters.
- o Our September 23, 1981 inspection report on the Advanced Isotope Separation Program involved activities at the Los Alamos National Laboratory, the Lawrence Livermore National Laboratory, and the Oak Ridge National Laboratory. During the inspection we became concerned about the lack of procedures and criteria being used in selecting one of the three separation processes for further development. After expressing our concern, the Headquarters program office promptly developed and issued the selection procedures and criteria. The Department announced the selection of the preferred process in April 1982.
- o Our review of the management of precious metals within the Department, issued on December 14, 1981, disclosed that some laboratories and offsite contractors were not properly safeguarding or accounting for precious metals in their custody and that \$430,000 in annual savings could be realized

if the Department approved a pooling program that would provide these contractors with recycled precious metals at prices considerably below market. Department officials agreed to implement our recommendations to establish a precious metals pooling arrangement.

- o Finally just this month, on July 15, we issued a report on the need for timely management direction of the ISABELLE Project, a high energy physics project located at Brookhaven National Laboratory. This review was undertaken to determine the reasonableness of procurement actions taken for the ISABELLE project in view of the Department's decision not to request program funds for Fiscal Year 1983. We recommended that a management action plan reflective of the changed budget situation be developed to direct the expenditures of \$25-\$30 million funded for the project through Fiscal Year 1982. Program officials prepared the plan and agreed to examine all items previously purchased for the ISABELLE project to determine whether there are items on hand that are not needed.

Ongoing Projects

I would now like to briefly mention several ongoing projects within our office directed at the Department's laboratories and energy technology centers. These include a review of the Mirror Fusion Test Facility at the Lawrence Livermore National Laboratory; an interagency audit under the auspices of the President's Council on Integrity and Efficiency to examine accountability of Government property located at a number of DOE laboratories; a survey of the Department's energy technology centers in preparation for a multi-location audit of these centers; a review of the Department's program to immobilize defense nuclear wastes; a review of the Tokamak Fusion Test Reactor, which is one of the most important and most expensive projects in the Magnetic Fusion Program; and a review of the Department's check and balance system as it concerns the safeguards, security, and safety of special nuclear material.

Investigations

Before concluding my statement I would like to present a short summary of our investigative efforts at the Department's research and development facilities. Our office's investigative staff has handled 60 cases related to the Department's laboratories and energy technology centers since the beginning of 1980. Of these, 38 investigations have been completed, and 22 matters remain open and under investigation. Results of the completed investigations include 4 arrests; 12 administrative actions ranging from suspension to termination of employment of Department and contractor employees; and recovery of about \$85,000. The cases have involved a broad range of allegations, such as misappropriation of Government funds, misuse of Government property, theft of precious metals, and conflicts of interest.

The cases have derived from a number of sources, including the IG Hotline and the proactive activities of our field investigators. This program has been particularly successful with respect to the laboratories and energy technology centers where we are able to have staff stationed at, or near, these facilities. At present, we have investigative staff stationed at Chicago, Oak Ridge, Richland, Albuquerque, and San Francisco. We are also planning to assign a full-time investigator to Idaho Falls.

When allegations concern possible violations of Title 18 of the U.S. Code, Conflict of Interest, or any other Federal criminal statute, we work closely with the Federal Bureau of Investigation. In fact, we have recently concluded a written Memorandum of Understanding with the FBI, which formally establishes, for the first time, policy for the Bureau and our office with respect to the referral and investigation of matters of mutual interest. This step will significantly enhance our ability to investigate and present more rapidly cases to U.S. Attorneys for prosecutive opinion.

We also receive information leading to investigative cases concerning laboratories and energy technology centers from the Department's Office of Safeguards and Security, or OSS. DOE Order 5633.1, dated July 28, 1980, requires, among other things, that all violations and losses known by DOE employees and DOE contractor and subcontractor employees be reported to OSS. At present, we are working to improve and expand our relationship with the OSS to obtain better, more timely information regarding any allegation of theft or other improper activities, so that we will be better able to carry out our responsibilities under the DOE Organization Act with respect to such matters.

We are particularly enthusiastic about an ongoing joint project with the Office of Safeguards and Security. The project involves a study of insider crime at DOE to provide us with a more comprehensive understanding of the characteristics of insider crime and criminal conduct as they relate to the Department's facilities and responsibilities. The study is especially geared to focus on such activities at the laboratories and energy technology centers. We are confident that the study will provide both our office and the Office of Safeguards and Security with information that will better enable us to carry out our respective responsibilities and duties.

We believe that we have deployed our limited resources in a manner to allow us the maximum impact on fraud, waste, and mismanagement in the Department.

STATEMENT OF JAN W. MAREZ,

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to discuss with you the role of the Department of Energy's national laboratories and energy technology centers; to describe the Department's program and administrative management structure concerned with these facilities; and to summarize the processes and procedures we use to ensure their effective and efficient operation in the Department's best interests.

We, in the Department of Energy, are justifiably proud of our national laboratories. The major multiprogram laboratories, along with the program dedicated laboratories and energy technology centers, form the backbone of the Federal Government's energy and nuclear weapons research, development, and engineering capabilities. The laboratories were responsible for carrying out more than half of the Department's over \$4.5 billion worth of R&D programs. Their programs range from the most fundamental research programs in the physical and life sciences to the most advanced goal-oriented design and development programs in nuclear reactors and nuclear weapons. The laboratories have built up an unusual diversity in scientific and technical resources, manpower, and plant facilities that represent national assets of enormous importance.

The multiprogram laboratories are Government-owned contractor-operated (GOCO) facilities and are staffed with non-Federal employees. The energy technology centers are manned by Federal employees. The GOCO contractors include universities and university consortia, non-profit firms, and major industrial concerns. The contracts are generally long-standing agreements that are competed or renewed at 5-year intervals. Fiscal year 1982 Department of Energy funding at the nine multiprogram laboratories will be \$2.5 billion. The multi-program laboratories also conduct research for other Federal agencies, primarily the Nuclear Regulatory Commission and the Department of Defense, and

also under certain conditions for industry and private institutions. We estimate \$500 million in such reimbursable work for others will be conducted in FY 1982. There are presently about 45,000 contractor personnel employed at these laboratories. The business of the national laboratories is cutting edge research, essential to ensure our economic, scientific, and national security positions.

The GOCO contracting arrangement has proven very effective. The quality of technology from the laboratories, since the days of the Manhattan Project, has continued to be exceptional. We benefit as a Nation from this relationship that takes full advantage of the combination of the research management and capabilities of American universities; the skill, experience, and high-technology managerial expertise of American industry; and the leadership of the Federal Government.

Let me briefly describe the Department's management structure, for policy overview and for administration of the national laboratories. This is a structure which has proved sound over the years and which has been updated to meet changing requirements.

The Under Secretary of the Department functions as the chief operating officer, and provides policy direction for the research and development conducted at the laboratories. We have a real and current interest in keeping research at these laboratories concentrated on national security missions and on long-term, high-risk research beyond the interest and capability of the private sectors. In that context, my office issued guidance this year on the mission of the laboratories and criteria for conducting work at the laboratories.

A number of the Department's Senior Officials, including the Director of Energy Research, the Program Secretarial Officers, the Assistant Secretary, Management and Administration, and the Managers of the Operations Offices, play important roles with regard to the laboratories. The Director of Energy Research has statutory responsibility to advise the Department's Senior

Management on the overall well-being and use of the multiprogram laboratories. In that capacity, he coordinates an institutional planning process that sets the framework for the laboratories' overall programmatic role and 5-year R&D plan. The Program Assistant Secretaries (e.g., Assistant Secretary for Nuclear Energy) provide institutional planning guidance and technical direction to the multiprogram laboratories for programs in their respective areas. The energy technology centers are single program laboratories which report directly to the Assistant Secretary for Fossil Energy. For administrative functions (procurement, finance, personnel, etc.), Headquarters policy and guidance are provided by the Assistant Secretary, Management and Administration, to the Managers of the Operations Offices and the energy technology centers. The Operations Office Managers are then responsible to assure that the laboratories are run consistent with the program and planning guidance received from the Under Secretary and Program Secretarial Officers and the administrative guidance from the Assistant Secretary, Management and Administration.

The Department of Energy has established several systems to set the standard for, and to evaluate the transactions of, the national laboratories and energy technology centers. With regard to the national laboratories, one must remember that the standard of performance of the contractors' conduct, including those who manage and operate the national laboratories, is not the same standard of Federal statutes, regulations, and directives that control the conduct of Federal business, but rather the contract document. Contractors, in general, are held to a standard of sound business practice and the specific provisions of their individual contracts. However, because of close relationships of the national laboratory contractors in their support of the Federal R&D mission, contract provisions providing for Federal involvement in, but not total Federal control of, their operating practices are included.

The GOCO contract is a unique Government contracting arrangement. The purpose of these contracts is to operate and manage the Government's facilities on behalf of the Government. Under a

GOCO contract arrangement, the contractor is closely integrated into the Governmental system. The advantage of the GOCO contract is that it enables the contractor, though maintaining his independent identity, to apply industrial practices and management techniques to serve the needs of major Governmental research missions. The Government, of course, must maintain overall program responsibility, oversight, and control, in addition to retaining a specific approval authority on a variety of issues. In summary, the GOCO contracting concept is that the Government is responsible for determining what is to be done, and the contractor for getting it done in a manner consistent with good business practices.

The six Department of Energy Operations Offices in the field, which function as the Department's GOCO contracting offices for managing the national laboratories, implement Headquarters policy and guidance and provide day-to-day oversight of the national laboratory contracts. The Operations Offices work with the laboratories in developing institutional plans and ensuring laboratory compliance with the approved plans. They are responsible for ensuring the integrity of laboratory accounting, property, fiscal, budgeting, procurement, internal audit, and health and safety functions. The Operations Office Managers assess periodically the management, administrative, and cost performance of the laboratories, and, in conjunction with Headquarters, the quality of the technical performance. The ETC Directors are responsible for the integrity of these functions at the energy technology centers.

Another control is a system of audits and reviews by the Office of Inspector General (IG), the Operations Offices, and, for the laboratories, contractor internal audit staffs. The scope of the audits and reviews includes allowability of costs incurred, accuracy of financial reports, compliance with regulations, the efficiency and economy of activities performed,

and effectiveness of programs conducted. In our view, the Operations Offices' oversight, coupled with the IG's audit efforts provides an effective overall audit and review program for the Department. The Operations Offices and the laboratories are also, obviously, subject to audits by the General Accounting Office (GAO). Forty GAO reports dealing with some aspect of the Department's Operations Offices have been received over the last two and one-half years.

To monitor completion of needed actions, a Departmental Order was issued December 5, 1980, which established both the DOE Audit Report Tracking System (DARTS) and the DOE Audit Review Council (DARC). DARTS requires Department Headquarters and Operations Offices to report quarterly the status of corrective actions being taken on audit report recommendations. The information is reported to and accumulated by the Controller for review and preparation of a quarterly management report for the DARC. The DARC is responsible for assuring that corrective actions on audit recommendations are responsive, timely and complete. The DARC consists of Senior Department Management and includes the Inspector General and a member representing the Office of the Under Secretary.

In addition, on April 23, 1982, the Department issued a DOE Order on Internal Control Systems to satisfy the requirements of OMB Circular A-123. This Order requires a self-assessment by Managers of the adequacy of internal controls in both programs and administrative functions, e.g., financial, personnel, procurement, etc., under their control. In December of this year, we will provide OMB a report on the results of our self-assessments and our indicated followup action plans, including the monitoring of progress. This program is to be a continuing self-assessment process which will have oversight provided by a steering committee comprised of the Assistant Secretary, Management and Administration, the Inspector General, the Controller, and the Under Secretary, with added rotating membership of other key Senior Departmental Representatives.

In addition, an Internal Control Review Guide is being developed to assist Headquarters and Operations Offices in conducting reviews of the programs and administrative functions determined vulnerable.

Recently, we have developed a uniform contractor appraisal program, and a Department of Energy Order will be issued in the near future prescribing minimum areas of coverage and common schedules for conducting appraisals. We expect the Department will benefit from this more orderly and systematic approach to appraising the performance of the national laboratories.

The system we use for assuring the integrity of the national laboratories' procurement systems is the Contractor Procurement System Review. This is an evaluation by a team of Government personnel of the contractor's procurement system to assess the efficiency and effectiveness with which subcontracts are placed under the prime contract. The GOCO contractors are required to maintain a procurement system which is acceptable to the Department.

The system for the acquisition, control, and disposition of property in the possession of all Department contractors is prescribed through the Department of Energy Property Management Regulations, which implement the governmentwide regulations issued by the General Services Administration. As in the procurement case, each GOCO contractor is required to put in place a property management system which is acceptable to the Department. Compliance is monitored through a system of property management functional reviews performed by the responsible Operations Office.

As a result of these reviews, deficiencies have been reported and corrective actions taken, both at the local level to improve transactional performance and at the Headquarters level by clarifying and better communicating the system's requirements to the Department's field offices.

Another mechanism by which the Department exercises control of national laboratory contractors is "advance understandings" which are negotiated and incorporated in the individual contracts. These understandings form the basis for determining reasonableness and allowability of personnel and certain other costs incurred during contract performance.

"Pass through" or "directed" subcontracts have always been discouraged by the Department. However, as a result of the Department's on-going oversight, potential problems were identified, and the practice was officially banned on a department-wide basis, in August 1981. A Department Order, dated January 15, 1982, which further institutionalizes this policy, states that "No DOE element shall direct a DOE operating or on-site service contractor to procure a subcontract to provide services directly to a DOE element."

Another Department Order, regarding noncompetitive procurement, is currently undergoing final coordination prior to issuance. It will require a completely documented and approved justification for noncompetitive procurement before any work assignments (including subcontracts) are directed by the Department through the laboratories.

We believe that these are positive steps and should remove the potential for problems in the area of noncompetitive subcontracting.

Over 18 months, the GAO has taken a selective look at various transactions by the national laboratories and energy technology centers. Let me assure you that the Department of Energy is concerned that its systems work and our transactions are proper. If, as we continue to study the Statement of Facts, we substantiate the cases cited by GAO, appropriate corrective actions will be taken.

The GOCO contractors and energy technology centers perform millions of procurement, property, and financial transactions each year. For instance the national laboratory system places over three hundred thousand subcontracts annually. We are not perfect. No matter how effective and efficient our management, one may expect there will always be individual cases which may be subject to question. That is why we have these many control systems in place. When one considers this transactional magnitude accomplished by the laboratories, one is led to the conclusion that the Department's system for administrative oversight of the GOCO contractors has worked. In fact, the GAO Statement of Facts identifies many conditions and concerns that Departmental personnel had already discovered in our existing process of reviews.

This Congress and this Administration has consistently maintained that management by regulation is neither effective nor desirable. We believe our systems of controls are the proper ones. When GAO and others discover that certain specific instances or certain transactions have not been in accord with existing sound management practices and rules, the response need not be the imposition of more rules and regulations on top of existing requirements. Rather, strengthening adherence to the existing standards together with active oversight can be much more effective. This is the course we seek to follow. Please be assured that we are receptive to suggestions for making our oversight systems better.

BY THE COMPTROLLER GENERAL
Report To The Chairman, Permanent
Subcommittee On Investigations, Senate
Committee On Governmental Affairs
OF THE UNITED STATES

Internal Control Weaknesses At Department Of Energy Research Laboratories

The Department of Energy (DOE) channels a large percentage of its budget into energy research. A major portion of this research is contracted out to industries, nonprofit organizations, and universities that operate government-owned research facilities. DOE also funds research at its energy technology centers, which are operated by DOE employees.

In a review of internal controls at six government-owned, contractor-operated laboratories and four energy technology centers, GAO found that improvements are needed in the areas of procurement, property management, and payroll to more adequately protect Federal assets and the expenditure of Federal funds. GAO also found that these types of facilities have received little audit coverage from the DOE Inspector General.

This report recommends that the Secretary of Energy take specific action to improve internal controls. In some instances, corrective action is already underway or is planned.



GAO/AFMD-83-38

15 DEC 1982



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-178205

December 15, 1982

The Honorable William V. Roth, Jr.
Chairman, Permanent Subcommittee on
Investigations
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your requests of May 11 and December 18, 1981, that we review selected functional areas at several Department of Energy research laboratories. We examined internal controls over procurement, property management, and payroll.

Our review disclosed numerous internal control weaknesses, and we have made recommendations designed to strengthen the weak areas. We note that some corrective action is already underway or is planned.

Sincerely yours,

Charles A. Bowker
Comptroller General
of the United States

REPORT BY THE COMPTROLLER GENERAL
OF THE UNITED STATES TO THE
CHAIRMAN, PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS, SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

INTERNAL CONTROL WEAKNESSES
AT DEPARTMENT OF ENERGY
RESEARCH LABORATORIES

D I G E S T

This report responds to two requests from the Chairman, Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, that GAO review the vulnerability of selected Department of Energy (DOE) research facilities to fraud, waste, and abuse. The review examined internal controls over payroll, procurement, and property management at six Government-owned, contractor-operated (GOCO) research laboratories (Sandia, Hanford, Argonne, Oak Ridge, Fermi, and Brookhaven) and four Government-owned, Government-operated energy technology centers (Bartlesville, Laramie, Morgantown, and Pittsburgh). In fiscal 1982, DOE budgeted over \$3 billion for its GOCO facilities and over \$230 million for its energy technology centers. On July 27, 1982, GAO testified before the subcommittee on the results of this review.

GAO noted specific problems at a number of the laboratories in each of the areas covered. In many instances, DOE has acknowledged the problems and corrective action is underway or is planned.

INAPPROPRIATE PROCUREMENT PRACTICES
AT GOCO FACILITIES

GAO's review of procurement practices at the GOCOs revealed (1) DOE headquarters directed GOCOs to procure the services of specific consultants and consulting firms, thereby circumventing effective procurement controls, and (2) laboratories improperly subcontracted for consultants and other professionals.

DOE has frequently directed operating contractors to procure certain services because of the delays in the DOE procurement process and because the operating contractors could make awards faster, since they are not required to follow all aspects of the Federal and DOE procurement regulations. This practice (1) often circumvents many of the

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controls established to protect public moneys and ensure adherence to Federal procurement policies and procedures and (2) forces the operating contractors to disregard their own procurement policies and procedures. A total of 112 directed procurements valued at over \$18 million were identified at three labs. However, GAO believes the universe of directed procurements is much larger. In many cases laboratories are directed to award a contract to a preselected source at a predetermined price. (See pp. 7 and 8.)

During GAO's review, DOE's Assistant Secretary for Management and Administration issued a memorandum prohibiting DOE headquarters from directing procurements for support services, noting that the practice avoided normal procurement safeguards. Subsequently, DOE issued an order prohibiting such contracts when the services directly support DOE headquarters. While this should improve the situation, DOE can still direct procurements as long as the laboratory has been assigned technical responsibility for the work to be performed. GAO noted three directed procurement awards at Argonne valued at over \$304,000 that occurred since the prohibitions, and two more that were pending award. (See p. 8.)

GAO also noted several practices involving subcontracting for consultants that in some cases appear to have led to waste or misuse of Federal funds:

- Unwarranted sole-source procurements. (See p. 9.) For example, sole-source contracts were awarded to one firm because it could provide a technical talent pool of "highly qualified" individuals although many of the professionals provided had just graduated from college and had little or no experience.
- The inappropriate use of subcontractors to hire employees. (See p. 11.) To illustrate, six individuals were recruited by one lab and referred to a subcontractor so that they could be hired indirectly. This practice is wasteful since the laboratory pays a 70-percent markup in addition to salaries to cover that subcontractor's overhead and profit.
- Retroactive execution of contracts. (See p. 13.) For example, at one lab a consulting firm incurred over \$53,000 in charges by beginning work more than 5 months before a contract was executed.

--Inadequate controls over payments for services. (See p. 13.) In 8 of the 10 cases we reviewed at one lab, officials were not in a position to reasonably attest that services were provided. In one instance, an approving official approved over \$19,000 in payments to a consultant without knowing if the claim was correct. This official had never met the consultant and had only talked with him over the telephone a few times. Moreover, the consultant never provided the laboratory with his work products.

WEAK CONTROLS OVER PERSONAL PROPERTY,
PAYROLL ACTIVITIES, AND FOREIGN
TRAVEL AT GOCO FACILITIES

CAO found that controls over personal property need to be strengthened because inventory procedures were inadequate, many property items were not marked and controlled properly, and many items on hand appeared to be excess and unneeded. (See p. 18.) For example:

--Instead of having an independent party conduct physical inventories, three laboratories require only that responsible custodians verify that they still have the property entrusted to them. (See p. 18.)

--At Argonne and Brookhaven, lab management decided to exclude from special controls items costing over \$500 irrespective of their susceptibility to theft, including such items as cameras, movie projectors, and typewriters. (See pp. 19 and 20.)

GAO found several internal control weaknesses involving payroll-related areas, affecting time and attendance, tuition reimbursements, salary increases, and negotiable instruments such as payroll checks. (See pp. 22, 23, and 24.) Also, better DOE oversight is needed over foreign travel by GOCO employees. While foreign travel is necessary to carry out GOCO programs, questionable travel practices occur because travel regulations are not consistently applied and foreign travel activities are not carefully monitored by DOE. For example, GAO found that, contrary to DOE regulations, excessive personal leave is sometimes used in conjunction with foreign trips, and contractor employees are not required to account for payments and travel reimbursements made by foreign hosts. (See p. 25.)

PROPERTY MANAGEMENT WEAKNESSES
AT ENERGY TECHNOLOGY CENTERS

DOE's energy technology centers generally have not adequately controlled capital equipment and theft-prone property. (See pp. 29-31.) GAO found that:

- Inventory procedures were ineffective. Inventories were not taken frequently enough and were not conducted properly.
- Property control records were inaccurate. New property was not recorded, missing property was not deleted, and records were not changed when property was moved or transferred.
- Thefts and missing property were not always re-reported and investigated.
- Controls over Government property held by off-site contractors were inadequate.

WEAKNESSES IN BOTH PROCUREMENT
AND PAYMENT FOR GOODS AND SERVICES
AT ENERGY TECHNOLOGY CENTERS

GAO found weaknesses in the small purchasing (under \$10,000) and payments systems at several energy technology centers. Goods and services were procured without requisitions and appropriate approval. In addition, written procedures adequately setting forth the purchasing process had not been developed. (See p. 31.)

At two of the centers GAO found that vouchers prepared for payment of service contracts were being routinely approved by individuals without firsthand knowledge that the service had been performed. Moreover, at two centers, controls were not adequate to prevent duplicate payments. (See p. 32.)

AUDIT COVERAGE OF RESEARCH FACILITIES

Although the Government-owned, contractor-operated facilities and energy technology centers represent more than 30 percent of DOE's budget, they have received little audit coverage from the Inspector General. Audit coverage was provided by auditors reporting to field operations offices. Because these auditors lack sufficient independence, GAO recommended in 1979 that these auditors be

assigned to the DOE Inspector General. During GAO's review, 46 of the 125 field audit positions were transferred to the Inspector General. In GAO's opinion, all of the field audit positions should be assigned to the Inspector General. (See pp. 34 and 35.)

RECOMMENDATIONS

GAO believes that a firm commitment by management at all levels is necessary to ensure that internal controls are improved so that the potential for waste and misuse of Federal funds and property is minimized. GAO recommends that the Secretary of Energy:

- Ensure that DOE's practice of directing operating contractors to make procurements, which results in the circumvention of Federal procurement regulations, is eliminated. (See p. 17.)
- Establish clear, minimum procurement requirements to be followed by operating contractors. (See p. 17.)
- Ensure that all DOE divisions and operating contractors adhere to the reporting requirements and travel policies set forth in DOE's foreign travel regulations including requiring that operating contractor employees report fees, travel, and expense reimbursements received from foreign hosts. (See p. 26.)
- Require the development and implementation of a property management system that includes procedures for property control at both the operating contractors and the energy technology centers. (See pp. 26 and 33.)
- Transfer all remaining field audit positions to the Inspector General. (See p. 35.)

Additional recommendations are detailed in the report. (See pp. 17, 26, and 33.)

AGENCY COMMENTS

While it did not comment on specific GAO recommendations, DOE indicated that many corrective actions are already underway and this report will help it initiate others. DOE also stated that it (1) has emphasized the importance of the issues in the report to operations office managers, (2) is developing a new, uniform system of formal evaluations of

multiprogram laboratory contractors' performance, and (3) has issued a draft order to more effectively control directed procurements.

DOE stated that the draft report did not sufficiently recognize internal control systems that are in place. GAO does not agree. GAO examined the internal control procedures and practices actually being followed by those operating the systems, and found that improvements are needed. (See app. III.)

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ABBREVIATIONS

BOA	basic ordering agreement
DOE	Department of Energy
ETC	energy technology center
GAO	General Accounting Office
GOCO	Government-owned, contractor-operated
IG	Inspector General
OMB	Office of Management and Budget

CHAPTER 1INTRODUCTION

This report responds to two requests from the Chairman, Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, that we review the vulnerability of selected Department of Energy (DOE) research facilities to fraud, waste, and abuse. In accordance with the initial request, we examined internal controls over payroll, procurement, and property management at four Government-owned, contractor-operated (GOCO) research laboratories (Sandia, Hanford, Argonne, and Oak Ridge) and four Government-owned and -operated energy technology centers (Bartlesville, Laramie, Morgantown, and Pittsburgh). Based on the results of the initial review, the Chairman of the Subcommittee requested that we do a followup review at three GOCO facilities reporting to the Chicago Operations Office (Argonne, Fermi, and Brookhaven) and three energy technology centers (Bartlesville, Morgantown, and Pittsburgh). The purpose of the followup was primarily to identify instances where control weaknesses have resulted in waste or misuse of Federal funds or property. GAO testified on the results of this review before the Permanent Subcommittee on Investigations on July 27, 1982.

DOE RESEARCH FACILITIES

The Department of Energy is a decentralized organization that channels a large percentage of its budget into energy research. DOE headquarters in Washington, D. C., provides overall program management; plans, budgets, and allocates financial resources for its field organization; maintains relations with other Federal agencies and the Congress; and reviews and coordinates policy for DOE's various programs. Actual project management and program implementation is delegated to the field and project offices and, through them, to the appropriate research facility.

The Department of Energy manages 12 major, multiprogram, national laboratories located throughout the United States. Many were established in the 1940s and 1950s under the Atomic Energy Commission to develop nuclear weapons and do fundamental nuclear energy research requiring large-scale facilities. In 1971 the labs' program responsibilities began to include non-nuclear energy research, development, and demonstration, which were later encouraged and substantially increased under the Energy Research and Development Administration.

Today the laboratories' role is to provide scientific support for DOE policies and programs and to provide a scientific staff with a core capability to support various technology programs. The programs carried out in the laboratories range from the most fundamental research in the physical and life sciences to the most advanced, goal oriented development in nuclear and alternative energy technologies, as well as nuclear weapons development.

In fiscal 1981, these laboratories' operating budgets totaled about \$2.8 billion and supported a staff of over 50,000 persons. A comparatively small staff located in DOE headquarters and at seven field organizations or operations offices throughout the country oversee the operation of the laboratories. The operations offices are the main connecting link between headquarters and the contractors and are responsible for day-to-day contract administration, management, appraisal, and oversight. While a national lab usually works for many DOE headquarters program offices, it is overseen by only one operations office.

The national laboratories are all Government owned but are operated by universities, nonprofit organizations, or private industry under contracts with DOE. A GOCO facility is in the unique position of being both a private contractor and essentially a part of the Government. The contractor employs the personnel, manages and operates the facility and authorized research programs, submits proposals for new or ongoing projects, and maintains all accounting records and reporting systems for the laboratory.

The accounting relationship between these contractors and the Government is similar to that of a decentralized division or branch office within a private company. The contractors account for and report on funds, property, and costs of operations under the contract in accordance with DOE's accounting and reporting systems and procedures. The contractors' reports provide basic data needed for drawing comparisons of progress and performance and for planning, budgeting, and financial analysis. These data are combined with data from DOE operations offices to produce comprehensive financial and cost statements covering all direct and contract operations of the Department.

All contracts for operation and maintenance of the laboratories are cost-type arrangements. That is, DOE reimburses all allowable costs incurred under the contracts. Some contractors, such as the Union Carbide Corporation, also receive a fixed fee; others, such as the University of Chicago, receive a management allowance to cover undefined indirect costs; and still others, such as the Western Electric Company, receive no fee or management allowance. In addition, almost all contracts are longstanding agreements renewed at 5-year intervals. For example, DOE's contract with the Union Carbide Corporation to operate the Oak Ridge National Laboratory was first negotiated in 1948. The contract has continued in force since that time; its current performance period extends through September 30, 1983.

The scientific and technical staff of the laboratories are generally treated as members of the Department of Energy for program planning and development purposes. The laboratories are expected to submit proposals for new work they feel is needed based on the results and progress of their own research and that of others. The proposals are somewhat analogous to "unsolicited proposals" except that they are prepared at DOE's direction and expense.

The cognizant operations office reviews all proposals submitted by its laboratories and pays particular attention to their compliance with headquarters program guidance and assumptions, availability of required manpower, and the reasonableness and completeness of the budget estimates.

Each headquarters program division follows its own procedures in arriving at a program and budget decision for new and ongoing project proposals. Once the decisions are made, funding for projects is channeled through the various operations offices and released to the contractors. To avoid the need for the contractors to use their own funds in performing work under the contracts, costs are paid under various letter-of-credit arrangements, allowing contractors to write checks against accounts in commercial banks. Since the facilities are Government owned, title to all materials and supplies is vested in DOE upon delivery. The replacement value of these facilities and their equipment is estimated to be \$8.5 billion.

In addition to the GOCO facilities, DOE manages various program-dedicated energy technology centers. These energy technology centers (ETCs) differ from the GOCOs in that (1) they are both owned and operated by the Government and (2) they usually specialize in one program area, such as coal gasification. The ETCs are much smaller than the GOCOs with operating budgets totalling approximately \$282 million in fiscal 1981. The ETCs have been assigned various lead roles in researching the development of alternate and substitute fuels.

The ETCs report to the Assistant Secretary for Fossil Energy. They provide DOE with a competent, in-house staff of engineers and scientists conducting research, development, and demonstration projects, as well as implementing selected Government programs.

THE IMPORTANCE OF INTERNAL CONTROLS

The Budget and Accounting Act of 1950 required Federal agencies to maintain effective internal control systems. Several recent developments have strengthened internal controls in the Federal Government, including the Office of Management and Budget's (OMB's) Circular A-123 and the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255). This legislation requires ongoing evaluations of the adequacy of internal accounting and administrative control systems of each executive agency. These evaluations, conducted under OMB guidelines, will determine whether the agencies' internal control systems comply with standards set by the Comptroller General.

A good system of internal controls can discourage and minimize fraud, waste, and abuse. Managers can use several methods to ensure the integrity of operations under their control. An adequate system of internal control includes: (1) a plan of organization that appropriately segregates functional responsibilities,

(2) a system of authorization and recordkeeping procedures adequate to provide reasonable accounting control over assets, liabilities, revenues, and expenses, (3) sound practices to be followed in performance of duties and functions of each organizational department, (4) personnel of a quality commensurate with responsibilities, and (5) a reliable system of internal review operating effectively to detect and correct errors. To succeed in misusing Federal funds or in defrauding an organization that has sound internal controls, an individual usually must have the help of others. Conversely, if sound internal and managerial controls are lacking, or if they have not been effectively implemented, Government programs become more susceptible to fraud, waste, and abuse.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objective in this review was to determine whether selected DOE research laboratories were vulnerable to fraud, waste, and abuse by evaluating the adequacy of internal and management controls in selected functional areas. Specifically, we set out to identify control weaknesses which, if corrected, could result in greater protection of Federal funds and assets.

At each location in the broad areas of procurement, property management, and payroll, we examined written policies and procedures, held discussions with persons responsible for operations, and compared procedures with an internal control guide and other internal control standards such as GAO's Policy and Procedures Manual for Guidance of Federal Agencies. To determine whether internal control procedures were in place and working properly, we tested various transactions.

For example, to help us assess internal controls over personal property at both types of facilities, we judgmentally selected property items and physically traced them to their locations to assess the accuracy of property records. At the GOCO facilities, we concentrated on controls over sensitive or theft-prone property items. Our assessment of GOCO procurement activities focused on subcontracts that were (1) directed by DOE and (2) awarded for professional or consulting services. We selected contracts in both categories to analyze their conformance to sound procurement practices. At Brookhaven, we reviewed all DOE-directed procurements identified for us by laboratory officials. At Argonne and Oak Ridge, we judgmentally selected directed procurements for detailed analysis, considering both the dollar value of the contracts and the geographic location of the work being accomplished.

With regard to procurement at the energy technology centers, we concentrated our efforts on procurements under \$10,000. We judgmentally selected sample purchases to assess the adequacy of the approval process and the controls over payments. While our results are not statistically projectable, we further verified the existence of internal control weaknesses through discussions

with personnel who operate the systems and/or by reviewing additional transactions.

Moreover, to aid us in our evaluation of selected internal controls, we reviewed audit reports issued by DOE internal auditors who work for DOE operations offices, and auditors who work for contractors. In some instances we used internal audit report findings, to the extent we could, as indicators of internal control problems. Consequently, in several instances we followed up to see if reported internal control weaknesses had been corrected where they concerned areas included in our review. We also evaluated the work done by the DOE Inspector General in preventing fraud, waste, and abuse at the types of facilities we visited, including the review of audit and investigation reports.

We conducted field work from May 1981 through October 1981 in response to the Subcommittee's first request, and from January 1982 through June 1982 for its second request. This audit was conducted in accordance with the generally accepted government audit standards.

The table on page 6 shows the funding levels for fiscal 1982 at the GOCOs and ETCs we reviewed in relation to the total funding for DOE research facilities.

DOE Funding of Research Facilities in Fiscal 1982

(in thousands of dollars)

	Operating expense budget	Capital expense and construction budget	Total budget	Percent
Multiprogram GOCOs reviewed:				
Argonne	190,933	29,603	220,536	
Brookhaven	120,482	33,377	153,859	
Hanford Engineer- ing Development	119,016	117,704	236,720	
Oak Ridge	237,093	60,409	297,502	
Sandia	502,341	86,193	588,534	
Total	<u>1,169,865</u>	<u>327,286</u>	<u>1,497,151</u>	53.1
All other GOCOs (seven)	<u>1,015,922</u>	<u>306,723</u>	<u>1,322,645</u>	46.9
Total multipro- gram GOCOs	<u>2,185,787</u>	<u>634,009</u>	<u>2,819,796</u>	100.0
Program-dedicated GOCOs reviewed:				
Fermi National Accelerator	87,762	50,700	138,462	14.6
All other program- dedicated GOCOs	<u>643,230</u>	<u>164,191</u>	<u>807,421</u>	85.4
Total program- dedicated GOCOs	<u>730,992</u>	<u>214,891</u>	<u>945,883</u>	100.0
Energy technology centers reviewed:				
Bartlesville	19,367	1,115	20,482	
Laramie	31,246	979	32,225	
Morgantown	82,806	1,552	84,358	
Pittsburgh	84,070	2,554	86,624	
Total	<u>217,489</u>	<u>6,200</u>	<u>223,689</u>	96.7
All other ETCs (1)	<u>6,797</u>	<u>756</u>	<u>7,553</u>	3.3
Total ETCs	<u>224,286</u>	<u>6,956</u>	<u>231,242</u>	100.0
Other DOE research facilities	<u>4,201,401</u>	<u>1,487,994</u>	<u>5,689,395</u>	
Grand total all research fa- cilities	<u>7,342,466</u>	<u>2,343,850</u>	<u>9,686,316</u>	

CHAPTER 2INAPPROPRIATE PROCUREMENT PRACTICES ATCONTRACTOR-OPERATED LABORATORIES

Our review of procurement practices at the GOCOs revealed two major problem areas: (1) the DOE headquarters practice of directing the laboratories to award contracts and (2) laboratory procurement practices for consultants and other professionals. Many of the laboratory procurement problems were exacerbated by DOE headquarters directing GOCOs to procure the services of specific consultants, consulting firms, and other services.

DOE-DIRECTED PROCUREMENTS

DOE has frequently directed operating contractors to procure certain services, sometimes specifying the contractor and the amount of money to be spent. We were told by both DOE and contractor officials that this was done because of delays in the DOE procurement process; the operating contractors could make awards faster since laboratories are not required to follow all aspects of the Federal and DOE procurement regulations. However, this practice often circumvents many of the controls established to protect public moneys and ensure adherence to Federal procurement policies and procedures. Also, it forces the operating contractors to disregard their own procurement policies and procedures. It was very difficult to determine the number and value of directed procurements because neither DOE nor the laboratories had information systems that specifically identified them. Those that were identified were found through discussions with various officials, employee recollections, and file searches. A total of 112 directed procurements valued at over \$18 million were identified at three labs. However, we believe the universe of directed procurements is much larger.

We identified 92 directed procurements of varying types at Argonne with an estimated value of \$13.4 million. At one extreme, DOE directs only the specific service to be provided. At the other, DOE identifies the subcontractor and specifies the cost and the service. The latter practice causes the most problems because it requires the laboratory to award a contract noncompetitively to a preselected source at a predetermined price. For instance, Argonne awarded a noncompetitive \$600,000 contract to a directed source even though the contract negotiator believed other companies were capable of bidding on the contract. The official also believed the contracted amount was unduly high, but because the procurement was directed, the contracting officer was unsuccessful in negotiating a lower cost. In another case, a contracting official felt he was unable to negotiate a fair and reasonable price because the firm apparently knew the amount of funds allotted for the procurement.

At Brookhaven, 11 directed procurements valued at about \$1.1 million were identified. Neither the labs that awarded these contracts nor the DOE program managers who directed the procurements evaluated them to ensure that the best price was obtained or that sole-source justifications were valid. Furthermore, while these procurements directly supported DOE headquarters programs, some of them, according to a lab official, had little relevance to Brookhaven's mission.

We also noted a number of directed procurements at Oak Ridge. In a letter dated October 1, 1980, the president of the operating contractor advised the Oak Ridge Operations Office of the practice of DOE directing the lab to subcontract with specific firms and attached a list of nine examples totaling over \$4 million. He pointed out that in directed procurements, the lab does not verify capabilities, check out potential conflicts, or confirm the validity of the selections.

In a report ^{1/} issued in April 1982 to the Chairman, Senate Committee on Energy and Natural Resources we pointed out that DOE had directed laboratories to award subcontracts on a sole-source basis. Also, DOE's Office of Inspector General reported that DOE headquarters personnel had directed another laboratory to award noncompetitive contracts.

In August 1981, while our review was ongoing, the DOE Assistant Secretary for Management and Administration issued a memo prohibiting directed procurements for DOE headquarters support services, noting that the practice avoided normal procurement safeguards. Subsequently, DOE issued an order prohibiting such contracts when the services directly support DOE headquarters. This should improve the situation, but, according to DOE Chicago Operations Office officials, DOE can still direct procurements as long as the laboratory has been assigned technical responsibility for the work to be performed. Thus, we noted three directed procurement awards at Argonne valued at over \$304,000 that have occurred since August 1981, and two more pending award. In our opinion, directed procurements could continue to be a cause of laboratory procurement weaknesses. Many of the problems discussed in the next section involved directed procurements.

IMPROPER LABORATORY SUBCONTRACTING FOR CONSULTANTS

During our review, we identified five practices involving subcontracting for consultants that, in some cases, appear to have led to waste or misuse of Federal funds:

--Unwarranted sole-source procurements.

^{1/}"The Subcontracting Practices of Large Department of Energy Contractors Need To Be Improved" (EMD-82-35, Apr. 22, 1982).

- Inappropriate use of subcontractors to hire employees.
- Retroactive execution of contracts.
- Inadequate controls over payments for services.
- Questionable hiring of former employees as consultants.

Although Federal Procurement Regulations do not directly apply to on-site operating contractors, they are required to follow procedures that approximate most aspects of the Federal regulations. These procedures are intended to ensure full and free competition so that necessary goods and services are obtained at reasonable prices to the extent possible, and that procurements are made in the Government's best interest.

Unwarranted sole-source procurements

Sole-source, noncompetitive contracting has been a relatively common practice at many of the contractor-operated laboratories. For example, we pointed out in the April 1982 report referred to in the previous section that 63 percent of the subcontracts over \$10,000 at Sandia and 72 percent at Argonne were noncompetitive. A number of weaknesses relating to sole-source procurements were discussed in that report. During our review for this report, we also discovered a number of weaknesses involving noncompetitive procurements at three laboratories: Oak Ridge, Argonne, and Brookhaven.

At Oak Ridge, \$15 to \$20 million a year is spent for research and development and technical assistance using basic ordering agreement (BOA) subcontracts which, in our opinion, may not be the most economical way to obtain needed services because the specific work required to be performed is not competitively awarded. BOAs are not complete subcontracts; they are prequalifying agreements that include negotiated labor and overhead rates and standard contract clauses. When a specific requirement for work in one of the task areas is identified, a letter release is issued to one of the BOA subcontractors. The letter specifies the work to be performed, the estimated costs, and the fixed fee. The letter release together with the BOA clauses constitutes the subcontract.

Of the 331 letter release subcontracts awarded by Oak Ridge during fiscal 1980 and the first half of fiscal 1981, only 11 involved competition. In our opinion, the lack of competition, combined with the fact that all BOA subcontracts are cost-plus-fixed-fee, does not ensure that needed services are obtained in the most economical way.

Furthermore, strong internal controls dictate that procurement specialists should conduct negotiations with potential vendors. Except to resolve technical questions, requisitioners of the services should usually have no contact with potential vendors until the contracts are executed.

We found, however, that in awarding BOA letter releases, purchasing specialists are often not even aware of the purchase requirement until after the subcontractor has been selected and a technical and cost proposal obtained. One danger of this approach is evidenced by the fact that several requisitioners told us they informed the firm selected to perform the work how much money was available in Oak Ridge's budget for this work. As might be expected, the firm's proposed costs about equaled the amount budgeted. For example, in April 1981 Oak Ridge awarded a subcontract for conceptual designs and cost estimates to be used in a study of alternative ways of supplying energy to an industrial park. The Oak Ridge individual responsible for monitoring the study told us that before the subcontractor submitted its proposal, he had informed the subcontractor that \$135,000 was available in Oak Ridge's budget to support this effort. The subcontractor's cost proposal totaled \$135,000.

At Argonne, of the 77 corporate professional service contracts we reviewed, 69 (90 percent) valued at \$11 million were sole-source procurements. Although many sole-source contracts with firms that provide Argonne with resident consultants were awarded because the firms provided an ostensibly unique service, in several cases the skills and educational background of the professionals made sole-source procurements appear to be unwarranted. For example:

--All 13 contracts with one intermediary firm were noncompetitively awarded. Although the justification for some contracts stated the firm would be used to "provide a technical talent pool consisting of highly qualified individuals in various scientific and engineering disciplines," some professionals had just graduated from college and had little or no experience.

--In another case, a professional had just received his undergraduate degree in geology when he was enlisted by Argonne to be a resident consultant. His only prior work experience was a temporary position at Argonne while a student.

In another instance a noncompetitive award in the amount of \$215,000 was made despite the advice of Argonne's attorney who found the sole-source justification "weak and nonconvincing."

Our review of the sole-source justification for 24 contracts and 10 work orders at Argonne revealed inadequate reasons in 22 of the cases. For example, a justification that states "demonstrated expertise" and "the quality of work performed under previous basic operating agreements" does not, in our opinion, demonstrate sufficient need to award contracts noncompetitively.

In April 1982, during our review, the Chicago Operations Office reported that Argonne procurement management continues to approve noncompetitive awards based on inadequate justifications

such as that a vendor has performed adequately on past procurements, maintains reliable delivery schedules, is experienced in his field, or does "professional work."

At Brookhaven, 6 contracts totaling \$914,217, out of the 11 contracts we reviewed, were awarded sole-source without adequate justification. Lab procurement officials did not evaluate the DOE program officials' justifications for sole-source award. In our opinion, the justifications were not valid. For example:

--One contract was awarded sole-source because the contractor "possesses an excellent mix of geological and engineering sciences experience tailored specifically to the project needs."

--Another award was based on a 400-word narrative which justified the sole-source award based on the contractor's past experience doing similar work for DOE, and his proximity to Washington, D.C.

In the first case, a DOE program official admitted that this contractor was not the only source that could do the work. He said the contractor was chosen because the work was needed promptly. In the second case, the DOE program official who directed the procurement said Brookhaven awarded the contract for administrative convenience, because the award would take too long if he went through headquarters. However, Brookhaven's technical representative who was responsible for monitoring the contract believed it was too expensive and others could have done the work for less.

Use of subcontractors to hire employees

We also found that Argonne hires professionals through intermediary firms for extended periods as a way to circumvent employment ceilings and qualification requirements and to avoid laboratory overhead. This practice results in unnecessary cost to the Government because Argonne pays these firms overhead and profit rates of 51 to 184 percent in addition to the consultants' salaries.

Argonne has a number of contracts with firms to hire consultants to work full time, side by side with Argonne employees doing the same kind of work. Many of these resident consultants had worked at the laboratory as student associates and were later referred to the consulting firm so that they could be employed as resident consultants.

We were informed that some resident consultants were indirectly hired because of laboratory employment ceilings or qualification requirements. Furthermore, a number of program divisions at Argonne hired resident consultants instead of full-time employees

to avoid their share of laboratory overhead. Below are some examples of the use of subcontractors to hire employees:

--We found that six former and current resident consultants had been initially recruited by Argonne and subsequently referred to one intermediary firm so that Argonne could obtain their services under contract rather than hiring them directly. Although these individuals earned a salary comparable to that of their Argonne employee counterparts, the laboratory pays an additional 70 percent to cover the intermediary firm's overhead and profit markup.

--Because of a hiring freeze, a technical division referred a chemist to an intermediary firm after he had applied for direct employment with the laboratory. Argonne paid the firm a 53-percent markup in addition to the chemist's wages during the period he was employed.

We interviewed 10 current or former resident consultants to determine the nature of their involvement at Argonne. Their employment as resident consultants averaged over 26 months. One resident consultant was employed for over 4 years. Seven of the 10 professionals stated that Argonne officials referred them to the firms for indirect employment at the laboratory, and 6 of them had participated in Argonne's student program while in college.

We identified seven resident consultants who later became Argonne employees. In comparing these individuals' hourly earnings and fringe benefit cost as Argonne employees with their cost as resident consultants, we estimate that, except for one case, Argonne paid between 2.2 and 66.4 percent more by employing them as resident consultants than it would have by hiring them directly as employees, as shown below.

Comparison of Hourly Costs

<u>Resident consultant</u>	<u>Intermediary firm</u>	<u>Argonne employee</u>	<u>Difference</u>	
			<u>Hourly amount</u>	<u>Percentage</u>
A	\$ 13.86	\$ 14.25	\$(0.39)	(2.7)
B	34.86	20.95	13.91	66.4
C	28.65	17.23	11.42	66.3
D	17.01	15.17	1.84	12.1
E	15.10	14.77	0.33	2.2
F	12.31	10.49	1.82	17.3
G	26.19	17.03	9.16	53.8

The increased long term cost of using firms to indirectly employ professionals is substantial. For example, Argonne paid a firm \$62,900 for the services of a resident consultant during the 12 months prior to the time he became an Argonne employee. However, the same individual, doing the same job, now earns only \$31,740 annually as an Argonne employee. Even after accounting for fringe benefits, Argonne still could have saved over \$19,000

annually by directly obtaining the individual's services as a regular employee. We estimate that Argonne incurred over \$230,000 in unnecessary costs from June 1977 to March 1982 by indirectly employing 58 resident consultants from two of the firms included in our review. We also noted that one Argonne division had been billed \$7.2 million since 1977 by intermediary firms, of which \$4 million covered the firms' overhead and profit markups. We were unable to determine the added costs of this arrangement but we believe they could be substantial.

We also found that Argonne contracts with temporary help agencies in the Washington, D.C., area to provide professionals whom, in some cases, Argonne originally recruited. The laboratory pays these agencies overhead and fees as high as 50 percent in addition to professionals' hourly rates. We estimate that Argonne could have saved \$45,543 between July 1980 and January 1982 by directly contracting with the professionals instead of using temporary help agencies.

Retroactive execution of contracts

Management controls over the procurement of services from consulting firms are further weakened when contractual agreements are executed retroactively. This practice facilitates abuse because the requisitioner may have authorized work without involving the laboratory's procurement experts, thus avoiding the accompanying procedural safeguards, such as competition of sources, determination of contractor responsibility, and price/cost analyses.

Nevertheless, our review of 37 contracts with corporate providers of professional services disclosed that 57 percent were not executed until approximately 1 month or more after the work had already started. For example, one consulting firm incurred over \$53,000 in charges by beginning work over 5 months before the contract was executed.

Inadequate controls over payment for services

During our review of controls over approving payments for consulting services, we found indications of weaknesses at a number of laboratories. For example:

--In 8 of the 10 cases we reviewed at Argonne, approving officials were not in a position to reasonably attest that the services were provided. One approving official had not met the consultant and only briefly talked with him over the telephone two or three times. The contractor never provided the laboratory with his work products, yet the official approved \$19,200 in fees without knowing if the claim was correct. We discovered that this consultant was working for another Government agency during some of the same hours he claimed he was working on this contract.

--At Oak Ridge, an employee required to monitor a \$510,489 subcontract had never spoken with a representative of the subcontractor and received only a few complimentary copies of progress reports. Yet, he was required to certify that the work was done under the terms of the contract.

--At Brookhaven, the authorized representative for a consultant contract, which was directed by DOE, performed basically clerical functions and had no technical responsibilities. According to the authorized representative, she had not seen the consultant's work, nor met him. Although she had occasional telephone conversations with him, she had no technical involvement in his work. She also questioned whether Brookhaven should be involved at all on the contract. According to her supervisor, DOE used Brookhaven only to award the contract. Although the representative had not seen any work or reports from the consultant, she certified that the work was performed and authorized payments to be made to him.

Questionable hiring of former employees
to provide professional services

At two laboratories, we noted potential problems concerning the hiring of former employees as consultants. While this situation does not in itself represent a conflict of interest, it does raise a question as to the degree of influence, if any, used by former employees in obtaining contracts. Oak Ridge, for example, had contracts with 144 individuals to provide consulting services. Of these, 39 (27 percent) were former employees of the laboratory.

In a number of cases, the former employees were given consulting contracts the day after they terminated employment with the laboratory. Frequently, these contracts were extended for long periods of time. For example, in one case, prior to an employee's retirement, the division director signed a request to employ this person as a consultant on projects which the retiring employee had proposed. The consultant subcontract was renewed for 3 successive years. Over the 4-year period, this former employee was paid \$57,342.

While Argonne does not keep records on former employees who work as either individual consultants or for corporate contractors, we identified 31 former employees who worked as consultants during fiscal 1981 and were paid \$170,000. We found the following examples of questionable practices:

--A laboratory engineer received a \$33,900 bonus as an incentive to participate in a special early retirement program. Although Argonne justified the special retirement program as a basis for terminating "older, less productive employees whose services have become less important," this retiree

was 1 year later awarded a noncompetitive contract for mechanical design work. According to the retiree's supervisor, the individual is now doing exactly the same work on a part-time basis for \$175 a day as he did as a laboratory employee.

--Argonne acquired the services of a former employee through an engineering firm less than 2 months after she left the laboratory. She worked as an administrative assistant in Washington, D.C., in a position previously held by an Argonne staff member. Under this new arrangement the former employee was paid at almost twice her former salary. Because the laboratory was also paying the firm indirect charges of 147 percent, Argonne's annual cost for using this former employee increased from \$11,440 to \$48,512. She was later rehired as an employee by the laboratory.

--Argonne awarded a noncompetitive \$1.6 million contract to a consulting firm whose president was a former employee. The contract was used to indirectly hire professionals to work at the laboratory. Although Argonne officials referred most of the professionals hired by the firm, the laboratory paid the firm a 70 percent markup in addition to the salary of the firm's employees used on the contract. According to the firm's president, he suggested to Argonne that the laboratory use his firm to indirectly employ professionals.

To prevent "revolving door" abuses, Office of Management and Budget Circular A-120 directs agencies not to give former Government employees preference when hiring consultants. The circular also states that consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

DOE OVERSIGHT OF LABORATORY PROCUREMENT FUNCTIONS

DOE conducts periodic evaluations of contractors' overall procurement systems. Based on those evaluations, DOE approves or disapproves systems and determines how much independent subcontracting authority contractors should have. Generally, this review is performed at least every 2 years at each of DOE's major contractors, but review intervals may be extended if DOE determines that it can adequately monitor sensitive areas of a contractor's system. In between procurement systems reviews, DOE field offices are supposed to periodically conduct similar but less comprehensive surveillance reviews. These reviews vary in frequency and scope among the various contractors but are designed to ensure that the procurement systems continue to operate as approved.

In addition, DOE's oversight operations include the advance review and approval of larger value subcontracts. At Sandia and

Argonne, for instance, DOE reviews before award all cost-type subcontracts over \$500,000 and all fixed-price subcontracts over \$1 million.

Our April 1982 report pointed out that DOE procurement oversight of on-site operating contracts was sometimes shallow in scope or was not always performed. For example, at Sandia, DOE had conducted only one scheduled surveillance review since February 1979--the date of the last systems review. It was done in October 1980, but because of the DOE staff's heavy workload the report was never published. A similar situation existed at Argonne where surveillance reviews have diminished in frequency and have not been formally structured or reported. In addition, the threshold for advance review and approval of laboratory subcontracts required that DOE review only a relatively small portion of laboratory procurements. For example, at Sandia only 39 procurement actions in fiscal 1980 (out of 3,117 original contract actions) were subject to this evaluation.

During our review of Argonne's procurement of professional services, we noted that DOE's advance review and approval procedures were not effective in detecting the problems we found. Most of the contracts for professional services were excluded from DOE advance review and approval because they did not meet the established thresholds.

CONCLUSIONS

Weak controls at some of the laboratories over the procurement of professional services resulted in wasteful practices and heightened the likelihood of fraud and abuse. DOE contributed to procurement weaknesses by directing the laboratories to procure certain services, thus bypassing established procedures. Moreover, DOE's oversight of the operating contractors' procurement practices could be improved.

The improper use of firms to provide professionals at Argonne was largely caused by inappropriately relying on the technical divisions to decide on how best to obtain professional services. We believe the technical divisions do not have the expertise or the objectivity to make decisions on how to best procure services.

Some laboratories also permitted sole-source procurements despite inadequate justifications from the technical divisions. Likewise, the procurement personnel tolerated ineffective contracting practices, such as an excessive number of contracts that were signed after the work had started, even though this condition indicated that the procurement function of selecting vendors and negotiating contracts was being circumvented.

RECOMMENDATIONS

We recommend that the Secretary of Energy:

- Ensure that the practice by DOE personnel of directing operating contractors to make procurements, which results in the circumventing of Federal procurement regulations, is eliminated.
- Establish clear, minimum procurement requirements to be used by operating contractors in meeting the intent of Federal procurement regulations, such as specific criteria for (1) sole-source procurements, (2) using subcontracts for professional services, (3) approving payments for work done by subcontractors, and (4) hiring former employees as consultants. Also, these criteria should clearly prohibit situations where subcontractors start work prior to the execution of contracts.
- Require the operations offices to more closely monitor operating contractors' procurements by (1) improving the effectiveness of the systems reviews and (2) lowering the monetary threshold for the advance review and approval of professional services enough to include a significant number of those contracts.

CHAPTER 3WEAK CONTROLS OVER PROPERTY,PAYROLL, AND FOREIGN TRAVEL AT GOCOS

Our review disclosed that controls at Government-owned, contractor-operated facilities are weak in some areas of property management, payroll, and foreign travel. In our opinion, laboratory management has not adequately emphasized control in these areas and DOE oversight has not been fully effective.

NEED FOR IMPROVED CONTROLS OVER PROPERTY

Generally, we found that all labs had established property management systems. However, some laboratories were not following DOE property management regulations and had weaknesses which, if left uncorrected, could make Government property unnecessarily vulnerable to theft, waste, and misuse. These weaknesses included ineffective inventory practices and inadequate policies and procedures for ensuring that all property items are marked and properly controlled.

DOE has developed property management regulations for various types of property, including movable capital equipment and sensitive items. A sensitive item is defined as personal property that is susceptible to theft because it is attractive for personal use or can be readily sold. Sensitive items include such things as calculators, cameras, projectors, televisions, and typewriters. According to these regulations, sensitive Government property must be specially marked, secured, and physically inventoried at least once a year.

Ineffective inventories

Four of the labs had weak procedures for inventorying capital and sensitive equipment. We found that inventories were not done properly and that inventory cycles did not conform to DOE regulations.

Separation of duties is an important internal control principle. At some labs this principle was not followed; the custodians of property items were responsible for conducting the inventories. Without separation of duties, the potential exists for a person to convert property to personal use and conceal this action. Therefore, an independent reviewer should conduct the inventory in order to prevent improper actions.

The results of our samples show what can happen when inventories are not performed independently of those responsible for the equipment. At Fermi and Argonne, for example, custodians could not locate many sensitive items that were charged to them. At Argonne, 20 out of 230 items in our sample could not be found

even though custodians had "verified" their existence a month earlier. Fermi custodians also could not find 29 of 204 items in our sample. The missing items included cameras, projectors, tape recorders, and typewriters.

The results of a Sandia inventory conducted by independent parties also demonstrated the effect of allowing equipment custodians to inventory items for which they are responsible. A fiscal 1981 wall-to-wall physical inventory conducted by an independent group showed shortages of \$1.97 million, and 4,536 overages totaling \$3.07 million.

Furthermore, at Oak Ridge and Brookhaven the inventory cycles of capital and sensitive items did not meet DOE inventory requirements. Five-year inventory cycles for capital equipment used by Oak Ridge were significantly longer than the 2-year intervals prescribed in DOE regulations and, in our opinion, too long to effectively serve the basic purposes of physical inventories. Both the contractor and DOE officials told us that a waiver had been granted in 1959 permitting the longer inventory cycles at Oak Ridge.

Also, neither Oak Ridge nor Brookhaven had complied with the requirement to conduct annual inventories of sensitive items. Instead, both inventoried sensitive items every 2 years. While our review was ongoing, Brookhaven implemented new procedures which included an annual inventory of sensitive items.

Inadequate policies and procedures
for ensuring that items are marked
and properly controlled

At several labs, we found that many items were not adequately controlled because some labs did not (1) control sensitive items despite their susceptibility to theft, (2) properly identify and tag items, (3) adequately account for items, and (4) document property movements or transfers. These problems, in conjunction with inadequate inventory procedures, resulted in excess and un-serviceable items in inventory and increased the opportunity for theft of Government property.

DOE regulations require the labs to identify and tag equipment upon receipt and keep accurate and reliable records of the location and of the persons accountable. Additionally, sensitive or theft-prone items should be specially classified and controlled.

Regarding the labs' policies for controlling sensitive or theft-prone items, we found that two labs excluded items costing \$500 or more from sensitive property controls despite their theft-prone nature. These items might, in fact, be more susceptible to theft because of their greater value. As a result, a significant amount of the Government's investment in property does not receive the degree of control necessary to prevent misuse and theft. For example, at the Argonne lab almost \$2.1 million worth of electric

typewriters, cameras, movie projectors, and transcribers were not controlled as sensitive items, despite the fact that electric typewriters are frequently reported as stolen at Argonne.

The second lab, Brookhaven, had over 2,000 items costing over \$500, with a total value of \$3.7 million, which were not controlled as sensitive. These items included 315 electronic calculators valued at almost \$900,000, 750 electric typewriters valued at \$500,000, 88 tape recorders valued at over \$450,000, and 47 special purpose cameras valued at \$227,000. As a result of our review, Brookhaven agreed to control these items as required by DOE regulations.

Concerning the proper identification and tagging of sensitive items, we found that at four labs all theft-prone items were not properly tagged so that they could be readily identified in the inventory. For example, Fermi did not identify or attach numbered tags to sensitive items costing less than \$300, making positive identification during inventories very difficult. Of the 204 items we sampled at Fermi, 138 did not have the required markings. These items included cameras, slide projectors, and tape recorders.

At Brookhaven we found that responsibility for tagging sensitive equipment is assigned to division property representatives or custodians who are responsible for the items, and some items are issued for use without being tagged. During our physical inventory test within one department, we noted that five pieces of equipment were not tagged.

At Argonne, some custodians had in their possession sensitive items which were not marked or listed as sensitive property. In one department, for example, we located four cameras, two overhead projectors, three carousel projectors, and three tape recorders which were not marked as Government property or as sensitive items.

We found that three labs were not properly accounting for sensitive items. Property custodians responsible for items could not adequately control them because individuals moved them to different locations without informing the custodians. At Fermi, for example, we found several sensitive items in locations other than those recorded in the custodian's records.

--One word processor, valued at \$9,785, was in the home of an employee authorized to do laboratory work at home.

--An electric typewriter was moved to another floor and should have become the responsibility of a different custodian.

--After a long search, an expensive electric typewriter was found unused in the basement of a building other than the one the records indicated.

The problem of control over transfers of sensitive items also existed at Brookhaven. For example, we found that:

- Changes were not posted to property records when property was moved from one building to another. Ten of the 24 items we inventoried as part of our test had an incorrect property location listed.
- Equipment assigned to one department was loaned to other departments without obtaining paperwork transactions. One property representative stated that two items of equipment valued at \$700,000 and \$8,000 were loaned to other departments without the required paperwork.
- Compliance with laboratory guidelines concerning use of a property pass to control equipment taken home by individuals was rare. One property representative stated that many department personnel take property (such as calculators and cameras) home and rarely use a property pass.
- The internal controls at one department were not established to ensure that the property representative was notified as individuals transferred or retired. During our inventory we went to three different buildings before learning that the individual assigned the equipment had retired and the item had been reissued.

The results of Brookhaven's latest inventory demonstrated that inadequate control over the location of property is a serious problem. Consequently, extensive efforts are needed to reconcile property records with property on hand. At the close of the 1980/1981 physical inventory in March 1981, Brookhaven was unable to locate about 4,400 items valued at \$28 million, representing about 20 percent of its inventory. As of April 1982, after a search lasting more than a year, inventory items worth \$4 million were still missing.

During our efforts to verify the accuracy of property records for sensitive items, we noted that two labs had many items that were seldom or never used. Furthermore, these items were not declared excess so that others could use them, thereby perhaps reducing the need for some future purchases. For example:

- One Argonne custodian had seven calculators that he said he intended to declare excess.
- The lab's motion picture unit had a usable movie camera that an official said was going to be declared excess.
- An Argonne scientist had a camera costing \$359 that he said was used once or twice a year to take a high-quality picture. Yet, the laboratory maintains a staff of professional photographers to meet the needs of the scientific divisions.
- One custodian had 20 calculators assigned that were held by various employees in his department. Few were in actual use.

Because of the existing internal control weaknesses, the large amounts of property that go unlocated during inventories, and the security weaknesses at some labs, we believe losses through theft and diversion of Government property at GOCOs could be substantial. Weak internal controls not only make property vulnerable to theft and misuse, but also make these activities difficult to detect.

DOE has pointed out that Government property is unnecessarily vulnerable to theft at several laboratories. In a 1980 report, the DOE Chicago Operations Office's safeguard and security division stated that Brookhaven's increasing theft problem could be the result of an inadequate property protection program. According to this report, Brookhaven continued to adhere to an open-site concept of unrestricted access to the installation in spite of mounting evidence of a substantial problem of theft of Government-owned property. In addition, this same office's latest reports on Argonne and Fermi indicated concern over the high theft rates at those laboratories. Its report on Fermi commented on the lab's open-site concept which permits public access to the entire facility, including administrative offices and warehouses, where quantities of valuable Government property are highly vulnerable to theft. In addition, our observations of gate check procedures at the Oak Ridge lab showed that inspections for Government property were not being made at the frequency recorded by the guards.

WEAKNESSES IN PAYROLL-RELATED AREAS

Our assessment of payroll-related activities at GOCOs showed the following internal control weaknesses:

- Time and attendance practices not adequate.
- Controls not adequate over tuition reimbursements.
- DOE approval not obtained for salary increases.
- Safeguards weak over negotiable instruments such as payroll checks.

The weaknesses have resulted in abuses at some labs, such as leave usage not always being reported and charged and Government reimbursements being made for courses that do not appear relevant to employees' duties at laboratories. In addition, control weaknesses of this nature, if not corrected, could lead to significant waste or misuse of Federal funds.

Lab time and attendance practices

Several labs (Argonne, Brookhaven, and Fermi) have inadequate time and attendance procedures for their scientific staffs; DOE has not provided sufficient guidance to labs regarding such procedures. We found that, in contrast to Federal standards, professional staff members and their supervisors are not required to certify time worked before paychecks are processed. Consequently, 52 percent of

Argonne's and 38 percent of Fermi's work force are not required to formally submit time and attendance reports. In addition, some employees are not required to charge leave for absences of up to 4 hours at one lab and 2 hours at another.

Lenient time and attendance procedures can result in abuses such as

- not charging leave when employees are absent and
- not detecting unauthorized absences.

Our review of foreign travel at Argonne showed that in 7 of the 32 cases selected for review, staff members used vacation leave in conjunction with foreign travel without properly charging it.

Inadequate controls over tuition reimbursements

At three labs, we found that the policies and procedures governing the reimbursement of costs to employees for outside education are so unclear that Government funds were used to pay for courses that were not job related. For example:

- At Argonne, between October 1978 and March 1982, five employees were reimbursed for 77 law courses at a cost of \$28,410. Four of the five employees are pursuing their law degrees. However, none appears to need a legal background for the current job: three are engineers, one a personnel specialist, and the other a management information specialist. According to Argonne's Chief Counsel, the legal department has never employed an individual who received a law degree through the lab's tuition reimbursement program nor is it likely to, since it would prefer someone with legal experience.
- Also at Argonne, a clerk was fully reimbursed for courses she took to obtain a degree in court reporting. The cost of these courses was \$4,037. Shortly after getting her degree, she quit her job at Argonne to take a job as a court reporter.

DOE approval not obtained for salary increases

At one facility, the Hanford Engineering Development Laboratory, we found that, contrary to DOE regulations, the contractor failed to obtain necessary DOE approval for all executive salaries exceeding \$40,000 annually. An operations office report in 1981 noted that 38 employees had received salaries in excess of DOE-approved rates. The amount of the overpayments totaled over \$76,000. The report also noted the lack of required DOE approvals

in a review of 1979 and 1980 salary levels. The report cited poor internal controls and inadequate procedures as reasons for these overpayments and recommended that the contractor reimburse the Government. DOE subsequently approved the salaries retroactively and informed the contractor that future overpayments would not be reimbursed.

Inadequate safeguards
over negotiable instruments

At two laboratories, controls over negotiable instruments need to be strengthened. For example, at Oak Ridge we found that blank checks were physically transferred from one division to another without any concurrent transfer of accountability or adequate verification of the numbers of checks being transferred. At times, blank checks were left unattended and accessible to a large number of people. Also, an employee who had possession of check signature plates also had access to blank check stocks. As a result of these weaknesses, checks could be lost or stolen and the discrepancy might not be detected for a long time. Officials at this laboratory took action to correct the weaknesses prior to the completion of our review.

In addition, at Argonne we observed that signed payroll checks were not always adequately controlled and protected prior to being distributed. On two occasions we observed that undistributed paychecks were left unattended in an unlocked safe within an unlocked office. We also observed weaknesses in controls over blank checks at this location. During the day, open boxes of blank checks were left in an open vault room. These checks are especially vulnerable to theft at lunchtime when few people are present. Although the checks are prenumbered and daily records of checks are maintained, theft of checks from the bottom of an opened box might not be discovered for several days.

CONTRACTORS' FOREIGN TRAVEL
NOT EFFECTIVELY CONTROLLED

DOE does not effectively oversee the foreign travel of GOCO employees. While foreign travel is necessary to fulfill GOCO programs and commitments, questionable travel practices occur because travel regulations are not consistently applied and foreign travel activities are not carefully monitored by DOE. This increases the opportunity for waste and abuse of DOE contract funds spent for foreign travel. Argonne alone spent almost one-half million dollars on foreign travel in fiscal 1981.

DOE has decentralized control over foreign travel. Offices apply the travel regulations differently even though DOE has one standard set of regulations. Also, DOE does not effectively monitor foreign travel at GOCOs. We found a number of weaknesses, including delayed trip reports; excessive use of vacation leave; and no accounting for payment of travel expenses, salaries, and fees to GOCO employees by foreign governments.

Although DOE requires a trip report within 30 days in order for DOE officials to monitor contractors' work, we found that during fiscal 1981, 54 of 92 Argonne and Fermi lab employees submitted trip reports from 2 to 274 days after the required 30-day period. In addition, 12 Fermi employees, or about 14 percent, had not submitted any trip reports. According to DOE foreign travel regulations, trip reports are DOE's principal mechanism for disseminating information about international energy issues and provide a basis for evaluating and monitoring foreign travel benefits.

We also found that many contractor employees use excessive amounts of personal leave while on foreign trips. To control the appearance of impropriety, DOE regulations state that the number of personal days should not exceed the number of business days. We found numerous examples where this regulation was not adhered to. One Argonne employee took 20 days of personal leave for traveling in Europe in conjunction with 8 days' attendance at a conference in Germany. Another employee received approval for 23 days of vacation after attending a 3-day symposium in Germany. Two Sandia employees each took 19 days leave in Europe while conducting business which lasted from 4 to 6 days.

Loose controls over employees who receive travel payments or reimbursements from foreign hosts can create opportunities for dual compensation. During fiscal 1981, foreign hosts fully paid or reimbursed the travel costs of 56 Argonne contractor employees who took about 19 percent of the foreign trips that year. In addition, some of these employees, while on the DOE payroll, received salaries and fees directly from their hosts which they did not report. In some cases, these fees were intended to cover meals and incidental expenses. While DOE requires its own employees to account for such amounts, it has no policy to prevent dual compensation of contractor employees in these situations.

CONCLUSIONS

Internal controls should act as a deterrent to fraud, waste, and abuse. Consequently, management has a responsibility to ensure that controls are in place and working as planned. However, we found property management weaknesses at several labs, including inadequate inventory practices and ineffective procedures for marking and controlling personal property items. Further, we found indications of excess or unneeded items on hand at two laboratories. In payroll-related areas, we found lenient time and attendance practices, inadequate control over reimbursement for outside education, inadequate safeguards over negotiable instruments, and a failure, at one laboratory, to obtain DOE's approval as required for salaries paid over a specified amount. We also found some weaknesses in the control of foreign travel resulting from inconsistent implementation of DOE foreign travel regulations and inadequate DOE oversight.

RECOMMENDATIONS

We recommend that the Secretary of Energy require the operating contractors to:

--Establish and implement appropriate property management controls that will ensure that contractors

- adhere to DOE inventory intervals, specifically 2-year cycles for capital equipment and a 1-year cycle for sensitive or theft-prone items;
- provide for segregation of duties between the custodial and inventory functions, that is, individuals having custody of property should not be responsible for taking inventory of that property;
- maintain accountability over property by classifying theft-prone items over \$500 as sensitive items, identifying and tagging theft-prone items, and documenting property transfers; and
- adequately protect theft-prone property by improving security procedures.

--Improve controls in the payroll-related area to

- require time and attendance reports that are certified for accuracy by both employees and immediate supervisors;
- require leave to be charged for absences that exceed a reasonable period of time, similar to requirements for Federal employees;
- establish appropriate criteria to ensure that tuition is reimbursed only for course work directly related to an employee's job; and
- ensure that negotiable instruments are properly safeguarded by improving controls over blank checks, check signature plates, and payroll checks.

--We further recommend that the Secretary of Energy:

--Ensure that all DOE divisions and operating contractors adhere to the reporting requirements and travel policies set forth in DOE's foreign travel regulations including requiring that operating contractor employees report fees, travel, and expense reimbursements received from foreign hosts.

--Require the operations offices to oversee the implementation of the above recommendations by operating contractors.

CHAPTER 4INADEQUATE CONTROLS OVER PROPERTY ANDPROCUREMENT AT DOE ENERGY TECHNOLOGY CENTERS

We reviewed four of the five DOE energy technology centers and found numerous weaknesses in various aspects of their operations. The major internal control weaknesses were in the areas of personal property management, procurement of goods and services costing less than \$10,000, and payments for goods and services received. In our opinion, these problems will not be corrected until management adequately emphasizes them at all levels in DOE. We have noted that corrective action is now being taken in a number of areas and believe that management must make a firm commitment to implement effective controls in order to adequately protect Federal funds and assets.

CONTROL WEAKNESSES OVER PERSONAL PROPERTY

DOE's energy technology centers have generally not provided adequate control of Government property. We found that

- inventory procedures are ineffective,
- property control records are inaccurate,
- thefts and missing property are not always reported and investigated, and
- controls over Government property held by contractors are inadequate.

These weaknesses make Government property susceptible to theft and waste.

GAO's Policy and Procedures Manual for Guidance of Federal Agencies (2 GAO 12.5) states that agencies should manage property procured with Federal funds properly, efficiently, and effectively. Internal controls over property are an integral part of good management and help ensure that property is safeguarded and used only for its intended purposes. It requires that equipment be (1) promptly entered into inventory records upon receipt and promptly removed from those records upon disposal, (2) given individual identification numbers for easy and quick identification, and (3) periodically inventoried. Those responsible for physical inventories need to investigate missing items to ascertain the reasons for their loss and take actions necessary to prevent similar losses in the future. Property records should be adjusted to conform to the results of the physical inventories, which should be conducted by persons other than those responsible for the property or its procurement.

Inventory procedures are ineffective

We found a number of weaknesses in inventory procedures at the ETCs. Inventories are not conducted frequently enough, often they are not conducted in the proper manner, and they sometimes lack an adequate separation of duties needed to ensure that the results are valid. In addition, significant inventory discrepancies are often not investigated and property records are not properly adjusted based on inventory results.

Three of the four centers we visited were not conducting inventories at the frequency required by DOE regulations. At the fourth center, Pittsburgh, we were told that inventories had been made but officials could not document the results.

Also, we found instances where the inventories taken were not all-inclusive or not accomplished in a manner that would yield valid results. For example:

--Pittsburgh's last inventory of sensitive items was conducted in January 1981 and included only 16 percent of all the sensitive items.

--Bartlesville's inventories were conducted one building at a time in an employee's spare time. The 1980 inventory took 4 months to complete and no provision was made to prevent or track property movement during that time.

At two centers we found that inventory procedures lacked an adequate degree of independence to ensure that the results were valid because inventories were accomplished by asking individuals who were responsible for safeguarding the items whether or not the items were still on hand. For example, during Bartlesville's 1980 precious metal inventory, the property clerk made visual verifications of the metals but did not weigh them or inspect metals being used. The responsible custodian's word as to quantity and usage was accepted. The 1981 inventory consisted only of requiring precious metal custodians to report on changes in the quantities since the previous year; no independent verification was made. In addition, Pittsburgh's precious metal inventory consisted of asking users to submit semiannual reports on the quantities in their possession as well as future needs.

DOE procedures require that all property records be adjusted based on the inventory results and that all significant discrepancies be investigated. At two of the centers, Pittsburgh and Laramie, no documentation of inventories was available for our review. However, at the two centers where documentation was available, efforts to reconcile the results or adjust property records and investigate significant discrepancies either were not made or were not timely. For example:

--At Morgantown, the overages and shortages discovered during the September 1979 inventory were at such variance with what had been expected that no attempt was ever made to reconcile the differences or to adjust the property records.

--At Bartlesville, 58 pieces of capital equipment valued at over \$171,000 were discovered to be missing during the 1978 inventory, but the property records were not reconciled and adjusted until April 1991.

Property control records are inaccurate

At all four centers we found that property control records were so inaccurate that their value for use during inventories was highly questionable. Generally, the centers did not ensure that all new property was promptly added to the listing, that all missing property was deleted, and that records were annotated when property was moved or transferred.

The property management procedures at all centers were deficient in that property was not added to inventory records when it was received. For example, at Bartlesville, inventories conducted since 1980 located a total of 298 items of equipment that were not reflected in property records. Our sample of purchases of property showed that 22 of 54 pieces of equipment had not been recorded. In addition, at Laramie, we found numerous theft-prone items (such as a gas-powered grass trimmer, an electric drill, and a jigsaw) that also were not reflected in the property records. At Pittsburgh we found many items in almost every building that had not been recorded, including several video terminals costing almost \$4,000 and typewriters valued at over \$12,000. In total, we found about 387 capital and sensitive items worth approximately \$743,000 which had not been recorded on the property lists. Some of these had been purchased as far back as 1975. Moreover, the only two centers that had documented inventories available for our review did not adjust property records to reflect missing property, causing property records to be in error.

At three centers, information depicting the location of property was often erroneous because records were not updated to reflect movements or transfers. For example, at Pittsburgh 11 of 80 items we sampled were in locations other than those listed in the property records. Similarly, 16 out of 60 items we reviewed at Morgantown had been moved to different locations without the changes being reflected in the property records.

Theft and missing items not always reported

We noted many instances where thefts and missing items were not reported. For example, at Pittsburgh a property management staff member told us that at least 25 instances of theft had not been reported. He explained that during an inventory, after he could not locate many items, he was told they had been stolen. We

noted that reports of thefts had not always been prepared. Moreover, our sample of theft-prone or sensitive items showed that 13 of 50 items were missing but had not been reported. Also, our sample of 30 capital equipment items showed that three items valued at over \$20,000 were missing and not reported. At Morgantown, we noted that six goose down sleeping bags and a drill motor were lost, missing, or stolen but had not been reported.

Inadequate control of Government property
in the possession of contractors

In addition to the on-site property, the ETCs are also responsible for property that has been purchased by contractors and subcontractors with Government funds. Such property must be accounted for and disposed of by the ETCs at contract closeout. Yet, at the two ETCs where we examined this issue, we found that neither of them had verified the accuracy of the reports of Government-owned property held by their contractors by comparing the reported information with other available documents, such as payment vouchers. Furthermore, neither center had taken prompt action to dispose of that property once a contract was completed, and one center did not enforce the submission of the semiannual reports showing property purchased.

Corrective action taken or planned

During our review we noted that several centers were taking steps to improve property management. For example, Morgantown was implementing a new property management system. The system included written procedures, a wall-to-wall inventory during which each item was labeled with a decal, a reconciliation of inventory results with property records, and training courses on property management. In addition, Pittsburgh has developed additional directives and increased the size of its property management staff, and plans to implement new property management procedures.

WEAKNESSES IN PROCUREMENT OF GOODS
AND SERVICES COSTING LESS THAN \$10,000

ETCs need adequate internal controls over procurement transactions to ensure that only needed goods and services are purchased at the best possible prices and that they are well controlled after receipt. During our review of the ETCs we found weaknesses in the small purchasing (under \$10,000) and payments systems. Goods and services were procured without requisitions, approval procedures were inadequate, and no written procedures existed for small purchases.

Regarding procurement without requisitions, we found several instances at two centers where individual employees were making purchases outside the procurement system. Requisitions were being submitted after the goods and services had been received and sometimes after the vendor's invoice had been presented for payment. For example, at Bartlesville, employees in the operating

divisions rented typewriters directly from a vendor. Upon receipt of the monthly bill, a requisition was completed for payment. The center later purchased this equipment after the vendor notified the center that the monthly charges exceeded the purchase price of the equipment. At Pittsburgh we found that 11 of 124 sample transactions for goods and services were received before the requisitions were approved. Again, employees were purchasing directly from the vendors. One requisitioner told us it was her normal procedure to deal directly with the vendor.

Concerning the inadequate approval procedures, we found at two centers that authority to approve small purchases was vested in too many employees. At one center, supervisory approval of requisitions was not routinely verified. To illustrate, at Laramie, 116 of 169 employees have authority to approve requisitions up to predetermined dollar amounts. At Bartlesville, many employees can purchase goods under blanket purchase agreements from previously qualified local vendors. We found that 57 employees under one agreement and 30 employees under another were authorized to make direct purchases from vendors.

We also found that controls do not adequately ensure that only needed merchandise is purchased. For example, employees who pick up merchandise from local vendors are supposed to submit receipts to a designated individual who certifies that items were needed and received and completes a receiving report, which is transmitted to purchasing for matchup against vendor bills. However, our review of purchases made from three local vendors showed that receipts and receiving reports were not on file for some purchases. We were told that some had been discarded while others had never been received.

We also noted many instances where receipts for purchases were signed by employees who were not authorized to purchase merchandise. In some cases, authorized employees later countersigned the receipts. In addition, the purchasing clerk at Bartlesville told us she does not check for supervisory approvals when processing requisitions. We found that almost one-third of our sample of 74 small purchases had not been approved.

Finally, none of the ETCs had written procedures to adequately describe the small purchasing system. We believe this may be a contributing factor to the poor controls over the ETC's small purchasing systems.

WEAKNESSES IN PAYMENTS FOR GOODS AND SERVICES RECEIVED

At two of the ETCs we found that vouchers prepared for payment of service contracts were being routinely approved for payment by individuals without firsthand knowledge that the service had been performed. For example:

--Our review of 11 service contracts at Morgantown showed that the technical project officer on two of the contracts could not determine if the contractor was fulfilling the terms of the contract because inspection and performance logs were not being kept. The contracts were for janitorial service (\$326,000) and waste disposal (\$68,000).

--At Pittsburgh, the technical project officer on three of eight service contracts did not know what the contracts required, when the contractors worked, or even what was done when they were on the site.

At two of the centers, we found that controls were not adequate to prevent duplicate payments. For example, at Laramie we found that a duplicate payment had been made when the original copy of a bill of lading was used to support the first payment while a memorandum copy generated a second payment. At Bartlesville, we found that several duplicate payments had been made because initial payments were issued prior to obtaining receiving reports.

CONCLUSIONS

We believe that DOE property at the energy technology centers is unnecessarily susceptible to fraud, waste, and abuse because of poor internal controls. The centers have generally not adequately controlled government property at the sites because they have not (1) followed effective inventory procedures, (2) maintained accurate property control records, and (3) adequately reported and investigated thefts and missing property.

In addition, the centers are not enforcing property reporting requirements by offsite contractors, not verifying the accuracy of these reports, and not taking prompt action to dispose of property acquired by contractors with DOE funds. Therefore, they have little information for determining whether contractors are adequately controlling Government property.

Internal controls over small purchases and payments are not sufficient in that none of the centers we reviewed had complete and adequate written procedures to govern small purchases. Also, two Centers had inadequate purchasing approval authority, and two had ineffective controls to ensure that requisitions were completed and processed before purchases were made.

Also, three centers had weak controls over some payments, resulting in duplicate payments and inadequate assurance that services were actually received before payments were made on service contracts.

A number of the problems we noted have been pointed out from time to time by the Inspector General and various DOE review teams. However, as documented by the results of our review, adequate

corrective action has not been taken in all cases. In our opinion, these problems will not be corrected until management adequately emphasizes them at all levels.

RECOMMENDATIONS

We recommend that the Secretary of Energy:

- Require the development, implementation, and enforcement of an adequate property management system for use by the ETCs which would include procedures for
 - Conducting inventories of personal property with strict adherence to established inventory intervals; mandatory reconciliation of inventory results; and detailed instructions as to how inventories should be conducted to ensure an appropriate degree of independence, adequate coverage, and effective methods.
 - Updating property control records to ensure their accuracy by promptly adding new property to listings, deleting missing property, and changing property records when items are moved or transferred.
 - Promptly reporting thefts and missing items.
- Require the implementation of procedures by the ETCs to effectively control property held by offsite contractors, including establishing methods to verify the accuracy of contractor reports on DOE property, enforce contractor reporting requirements, and account for property when contracts are completed.
- Require the establishment and implementation of written procedures at the ETCs to adequately control small purchases. These procedures should limit the number of individuals who have authority to approve requisitions and ensure that (1) purchases are made only within the small purchasing system and (2) payments for goods and services are made only after it has been verified that they have been delivered according to the terms agreed upon.

CHAPTER 5AUDIT COVERAGE OF RESEARCH FACILITIES

Although the Government-owned, contractor-operated facilities and energy technology centers represent over 30 percent of DOE's budget, they have received little audit coverage from the Inspector General (IG). Because of limited staff, the Inspector General has chosen to provide only minimal audit coverage of these facilities since coverage is to be provided by auditors assigned to DOE's field operations offices. However, because these auditors report to the managers of the field offices and not to DOE top management, their audit independence is not assured, audit results are not routinely brought to the attention of DOE top management, and in some cases little or no corrective action is taken on audit findings and recommendations.

The Inspector General has not performed a comprehensive audit of any GOCO or ETC. The limited number of audits that have been performed concentrated on selected programs or activities at a specific research facility or a single function at several laboratories. According to IG officials, lack of staff limits audit coverage at GOCOs and ETCs. We noted that only three IG auditors were assigned to cover a 10-State area which included Argonne, Fermi, and Brookhaven laboratories as well as numerous other DOE facilities. In January 1982, 46 audit positions were transferred from DOE field operations offices to the Office of the Inspector General. Prior to that time, the IG had only 12 auditors in the field and approximately 40 in the Washington, D.C., metropolitan area in comparison to the 125 auditors assigned to the field operations offices.

With such limited staff available and the large number of operations office auditors, the IG allocated his scarce resources primarily to other areas. IG officials explained that they funneled their resources into newer programs--such as grants--since the operations office auditors provide coverage of GOCOs.

Our "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" requires that in order to ensure organizational independence, the audit staff should be able to report its findings directly to top management. The auditors most responsible for overseeing GOCOs and ETCs are attached to the field operations offices. These auditors conduct reviews to evaluate contractor performance, but their primary function is to support the operations offices' efforts to administer and manage contractor operations. Since the auditors report to the head of the operations office and not to the Secretary, their audit independence is not assured.

Public Law 95-91 created the Department of Energy and its Inspector General in 1977. The law requires that the IG

"provide policy direction for auditing and investigative activities relating to the promotion of economy and"

"efficiency in the administration of, or the prevention and detection of fraud or abuse in, programs and operations of the Department * * *."

The Inspector General has a high degree of independence since he is appointed by the President, reports directly to the Secretary or Deputy Secretary, and annually reports to the Congress. However, a weakness in this law, as compared to the act which created the 14 other executive branch agency inspectors general, is that it does not require a centralized audit function but calls upon the IG to "supervise, coordinate and provide policy direction" for the Department's audit program.

In 1979, we recommended that the Department's IG should control the 125 field auditors who report to the managers of field operations offices. ^{1/} In support of this proposal, the report stated that having auditors report to field offices "does not insure maximum independence in selecting activities for review of operations offices' effectiveness." Further, the report stated that field auditors cannot be independent since the activities they audit are the responsibility of the operations office managers to whom they report.

CONCLUSIONS

The Government-owned, contractor-operated facilities and energy technology centers we visited have received little audit coverage from the Inspector General. Virtually all auditing is done by auditors who report to a field operations office manager or a contractor. These auditors lack the degree of independence required by our "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Consequently, findings are not brought to the attention of DOE top management; there is no comprehensive audit plan and no assurance that corrective action is taken on audit findings and recommendations.

We have long supported incorporating the operations offices' field auditors into the IG staff and centralizing DOE's audit function in the Office of Inspector General. With its present decentralized audit structure, DOE cannot provide adequate independent audit coverage of its research facilities. The transfer of 46 out of 125 field audit positions to the Inspector General during our review will improve the situation. However, in our opinion, all field auditors should report to the Inspector General to ensure adequate, independent audit coverage of these facilities.

RECOMMENDATION

We recommend that the Secretary of Energy transfer all remaining field auditor positions to the Inspector General.

^{1/}"Evaluation of the Department of Energy's Office of Inspector General," EMD-80-29.

CHAPTER 6

GAO EVALUATION OF AGENCY COMMENTS

The Department commented on issues presented in this report in a letter dated October 4, 1982. (See app. III.) While not commenting on the specific recommendations, the Department noted that corrective action is underway in many instances and that this report will help the Department initiate additional corrective actions and complete actions already begun. DOE further stated that the Acting Under Secretary has emphasized the importance of operations office management giving attention to the issues in the report. The Department also indicated it is developing a new, uniform appraisal system to provide more formal evaluations of multi-program laboratory contractors' performance. With regard to directed procurements, DOE noted that in the future such noncompetitive subcontracts shall be subject to a requirement for a Justification for Noncompetitive Procurement by the terms of a draft order which (1) sets forth procedures for ensuring that noncompetitive awards are adequately justified and (2) states that directed procurements can be accomplished only when operating contractors have technical responsibility and the procurement furtherers assigned programmatic responsibilities.

DOE stated that the draft report did not sufficiently recognize its internal control systems which constitute the framework for transactional and process functions of the types of facilities we reviewed. We disagree. We examined the internal control procedures and practices actually being followed by those operating the systems and found that Federal funds and property were unnecessarily subject to fraud, waste, and abuse. In our recommendations, we point out that specific action is needed to strengthen existing systems by (1) establishing sound procedures, (2) actively enforcing their day-to-day implementation, and (3) intensifying oversight to ensure compliance.

Although DOE agreed that our findings regarding procurements by operating contractors did not show good business practices, the Department believed that the draft report did not effectively recognize the difference between procurement standards applicable to operating contractors and those applicable to Federal agencies. On the contrary, DOE regulations state that while Federal procurement regulations are not directly applicable to operating contractors, contractors are required to follow procedures which approximate most aspects of Federal regulations. DOE regulations also state that full and free competition must be accomplished so that reasonable prices can be obtained for goods and services and that procurements must be made in the Government's best interest. It is clear that these standards apply to both Federal agencies and operating contractors.

With regard to directed procurements, DOE indicated that the relatively few instances we noted since the agency took action to

stop the practice demonstrate a 95-percent improvement in this area. However, we point out that we did not try to, and could not, identify all directed procurements because of the problems discussed in chapter 2. Also, these actions took place at just one lab, which was the only location at which we tried to identify directed procurements since the prohibitions went into effect.

DOE also contended that our draft report did not adequately consider the transfer of 46 of 125 field audit positions to the Inspector General in January 1982. We have changed our report to more clearly represent this action. However, we feel strongly that all of the 125 positions should be transferred to the Office of the Inspector General to allow for better independent audit coverage of the Department's research facilities.

APPENDIX II

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United States Senate

COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
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SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS
 WASHINGTON, D.C. 20510

December 18, 1981

Mr. Charles Bowsher
 Comptroller General
 General Accounting Office
 441 G Street, N.W.
 Washington, D.C. 20548

Dear Mr. Bowsher:

On May 11, 1981, I requested that the GAO review the vulnerability of a number of Department of Energy research facilities to fraud, waste, and abuse, with this review covering both contractor operated and government operated facilities. I have been informed that this review has been completed and that your staff briefed the staff of the Permanent Subcommittee on Investigations on December 11. I have also been advised that your staff has done a thoroughly professional job and has uncovered numerous internal control weaknesses, primarily in the areas of payroll, procurement, and property management, which could lead to fraud, waste and abuse.

I am requesting that GAO conduct follow-up work at the Argonne (Illinois), Fermi (Illinois), and Brookhaven (New York) contractor operated laboratories in an attempt to further develop findings in the aforementioned areas. In particular I would request follow-up to:

- Determine whether certain costs charged to prime contracts, such as foreign travel and the use of consultants, are reasonable;
- Examine the potential or actual abuse of overtime as well as possible payroll abuse due to lack of controls over time and attendance for professional staff;
- Determine whether a lack of sufficient accountability over certain items of property susceptible to being stolen for personal use exists;
- Determine whether persons have been approving payments for services without adequate information that work was performed.

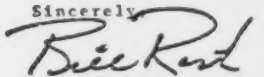
I would also like GAO to do follow-up work at the Pittsburgh, Morgantown, and Bartlesville Energy Technology Centers in the areas of property and inventory accountability, and procurement control abuses.

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I would like the Subcommittee staff to be kept informed of GAO's progress and GAO's work to be completed by March 31, 1982, with a report to be directed to the Subcommittee. If there are any questions please contact Howard L. Shapiro, Subcommittee Staff Counsel, at 224-3721.

Sincerely


William V. Roth, Jr.
Chairman

WVR, JR:hsc

APPENDIX III

APPENDIX III



Department of Energy
Washington, D.C. 20585

October 4, 1982

Mr. Dexter Peach
Energy and Minerals Division
U. S. General Accounting Office
441 G Street, NW.
Washington, DC 20548

Dear Mr. Peach:

The Department of Energy (DOE) appreciates this opportunity to review and comment on the General Accounting Office's (GAO) draft report, entitled "Internal Control Weaknesses at DOE Research Laboratories." The original and revised Statements of Facts upon which this draft report is predicated also served as the basis for hearings before the Senate Permanent Subcommittee on Investigations on July 27 of this year. We believe that the report has been improved in the interim. We further note that this draft recognizes activity in progress by DOE during the course of the review. The report will assist this Department in initiating additional corrective actions where necessary and completing actions already initiated.

To promote agency benefit from the report and in keeping with the Department's commitment made by Acting Under Secretary Jan W. Hares during the July 27 hearings, he has also emphasized the importance of management's attention to the issues raised by this report and the hearing to the Department's operations office managers at their scheduled August meeting.

We are concerned, nevertheless, that the draft report does not provide sufficient recognition and focus on the existence of the Department's internal control systems which constitute the framework for the transactional and process functions of the energy technology centers and the management and operating contractors. We consider it to be highly significant that the Comptroller General stated during the hearings this past summer that the Department's internal control systems are basically sound. (See GAO note on page 43.) Furthermore, DOE has systems currently in place to assess the practices of management and operating contractors as well as DOE offices and personnel. These systems are intended to bring necessary DOE managerial attention to see that identified weaknesses are corrected.

The Department's underlying control system with the management and operating contractors is set out in the specific terms of the contract with DOE which include advance understandings of a contractor's personnel and payroll reimbursement practices.

We conduct periodic reviews at various levels of management, and the operations are monitored frequently. The management and operating contractors have internal audit staffs to monitor compliance. Specific Department of Energy operations offices are assigned responsibility to negotiate and administer individual management and operating contracts. This responsibility includes periodic evaluations of various business practices of the contractors. The Department's energy technology centers are delegated limited procurement authority from designated DOE operations offices and are reviewed periodically by the operations offices. Both the contractors and the energy technology centers are subject to audit by the Inspector General.

Audit findings are evaluated by the Department's Audit Review Council, and implementation is tracked by the DOE Audit Report Tracking System. Vulnerability assessments are made and internal controls are being assessed throughout the Department in the ongoing implementation of Office of Management and Budget (OMB) Circular A-123. The Department's Audit Review Tracking System maintains a close watch over the progress by responsible departmental organizations in implementing the recommendations made by the Inspector General and GAO. The Audit Review Council is a high level management group performing periodic reviews and assuring timely resolution of audit findings.

We are also developing a uniform appraisal system to provide more formal evaluation of the effectiveness of the multiprogram laboratory contractors' performance. The procurement systems of these contractors are periodically evaluated by Contractor Procurement System Review teams made up of Government personnel. Property systems are audited by the responsible DOE operations office. The procurement system of the energy technology centers is reviewed on a biennial basis by the Department's Procurement Management Assistance Review team. Property management reviews are performed by Headquarters staff.

Although the draft report attempts to recognize the difference between the procurement standards applicable to DOE's management and operating contractors and those applicable to DOE as a Federal agency, the distinction is not effectively drawn. As a result, the report criticizes certain of these contractors' practices as not complying with Federal regulations and policies, when, in fact, they are not required to do so, though examples like those cited would not be considered good business practice.

As Acting Under Secretary Jan W. Mares testified during the July 27 hearings, one of the significant goals of the management and operating contracting concept is to enable a "contractor, though maintaining his independent identity, to apply industrial practices and management techniques to serve the needs of major governmental research missions." This allows the Department to take appropriate

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advantage of the combination of the skill, experience, and managerial expertise of American industry as well as the research and scientific skills of American universities. The Government personnel responsible for administering the contracts must: 1) assure that the necessary control provisions are included in the contract and 2) administer the contract so as to ensure that the contractor lives up to his responsibilities.

With regard to directed procurements and the effectiveness of the August 1981 letter from the Assistant Secretary, Management and Administration, and the DOE Order, we believe the figures in the report show an improvement of over 95 percent in this area. Although we believe the practice of directed procurement to be effectively controlled, any DOE direction requiring a noncompetitive subcontract shall be subject to a requirement for a justification for Noncompetitive Procurement by the terms of draft DOE Order 4200.1A.

With regard to the transfer of operations office auditors to the Department's Office of Inspector General, the report does not take into consideration events that had already occurred. As the Inspector General testified before Senator Roth this past summer, "In January of this year, 46 audit positions were transferred from the DOE field offices to the Office of Inspector General, bringing our total staffing to 159 full-time equivalent positions and an operating budget of \$8.1 million."

In conclusion, it is appropriate to reiterate the position of this Department as voiced by the Acting Under Secretary during the July 27 hearings that in cases in which "certain specific instances or certain transactions have not been in accord with existing sound management practices and rules, the response need not be the imposition of more rules and regulations on top of existing requirements. Rather, strengthening adherence to the existing standards together with active oversight can be much more effective. This is the course we seek to follow."

Sincerely,

William S. Heffelfinger
William S. Heffelfinger
Assistant Secretary
Management and Administration

GAO Note from page 41: DOE misinterpreted the Comptroller General's statement. During his testimony, the Comptroller General detailed numerous weaknesses in internal controls and pointed out that basic internal control procedures were not being followed.

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